THE

MADRAS REVENUE REGISTER.

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GRÂM-NATTAM.

There are probably fewer things which give a Revenue Officer more trouble than a disputed village site or grâm-nattam. Owing to the unsettled state of the law on the subject, or rather owing to the absence of any law regulating the enjoyment of such land, we find that Divisional Officers have each their individual crotchets regarding the question, and in one district it may happen that each independent officer acts in regard to such lands in a different manner. The result is that many suits are filed in the Civil Courts, a feeling of insecurity is raised amongst the village ryots, and but too often the richer inhabitants of the village contrive to monopolize the greater part of the land set apart for building purposes to the exclusion of the poorer villagers. We now propose to show the importance which is attached to this question, and to offer some suggestions regarding the changes we wish to see established.

The most memorable of any of the numerous disputes which have arisen regarding grâm-nattam are those which gave rise to the disturbances in South Arcot in 1840-41, during the Collectorship of Mr. Ashton. This gentleman issued an order in which Tahsildars were directed to levy tax on all village nattam lands not specially exempted in the Pymash accounts, whether occupied for houses or for backyards. The publication of this order excited great dissatisfaction amongst the ryots who were assembled for the jummahbundy. In Trikalore and Trinomally Taluks the ryots refused to accept their puttahs, and it was only by summary punishment that the Village Monigars were induced to take the puttahs for distribution to the ryots. In Chetput Taluk, (then part of South Arcot,) the disturbance reached its culminating point; not only did the ryots refuse to accept their puttahs, but the Monigars and Curnums refused to do so also. Mr. Ashton's authority was publicly defied, and he was interrupted in his jummahbundy cutcherry by a crowd which pelted him with sand, and compelled him to beat an ignominious retreat to an Indigo factory. Mr. Ashton appears to have been panic-struck, and cancelled the obnoxious order; but finding that even this concession failed to reduce the ryots to a peaceful attitude, he threw up his cards and expressed to Government his inability to restore the district to order. Mr. Dent was then sent to South Arcot as a Special Commissioner in order to pacify the cultivators, which he only succeeded in doing by the publication of the following order:—

PROCLAMATION.

The nattam or land set apart for the sites of villages has been exempt from tax from time im-

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memorial, and such exemption is recognized in the Pymash accounts of this district, whether occupied by the sites of houses or backyards attached to such houses, the extent of land occupied by each individual being restricted. In conformity with the above understanding, and with a view to satisfy any doubt which may have existed, it is hereby published for general information that portions of nattam occupied by houses and backyards shall be exempt from all tax whatever, although the said backyards, as is usual, may be cultivated with tobacco and vegetable for the use of the occupants. And although it is not the wish of Government that cultivation should be carried on to any extent in the nattam, still as it is the practice in many villages to cultivate portions of nattam besides the spots occupied as backyards, all such cultivation shall continue to be charged according to the provisions of the Hookamnamah with the highest rate of Poonjah teerwah of the village. In some villages, either from insufficiency of nattam or other causes, ryots have erected houses and enclosed backyards in teerwaput land without the permission of the Sircar. Ground so occupied is clearly liable to the survey assessment fixed on such land; but as the imposition of the tax now may press hardly upon some individuals, the tax upon such houses and backyards as are actually now in existence will be remitted, provided the extent of such backyards is not greater than that allowed by the scale for granting manimaup sanctioned by the Board of Revenue and Government in Fusly 1243, but no teerwaput land hereafter taken for buildings or backyards without the permission of the Sircar will, on any account, be exempt.

All tax levied on houses and backyards in Fusly 1250, contrary to the rules above recited, will be remitted and struck out of the account.

(Signed) J. DENT,
Commissioner.

From the above order, which we have given *verbatim*, three things will be apparent;—first, that all nattam lands, whether occupied by houses or backyards, are exempt from assessment, provided that the extent to which each individual is restricted was not exceeded; second, if that extent were exceeded and land intended for building was improperly used for cultivation, the Revenue authorities had no power to deprive the parties of possession, but could only levy a high rate of tax; third, that assessed lands which up to date of the order had been converted into building sites should in future be exempt from the tax leviable on the land. In order to be able to judge of the effects of this order, it will be advisable to discuss the meaning which we understand to be conveyed by the term "nattam lands." These lands are lands set apart and exempted from assessment in order to provide the cultivators of Government lands with sites for building villages. It appears to us that each ryot is equally entitled to a site for building his house, and, supposing that there is no available nattam land, it is the duty of the Revenue authorities to provide him a site free of expense. In conceding this right, however, we cannot avoid using the argument in an inverse way, and urging that the land thus set apart is set apart for building only, and that when cultivated the ryot requiring a site has a stronger claim to the nattam improperly cultivated by another than to assessed land lying outside the nattam. At present the disputes arising from improper possession of nattam land are endless. Land reserved for village sites is used indiscriminately for cultivation, for cattle-sheds, for storing rubbish and refuse, &c. Wealthy ryots obtain possession, by sale or by transfer, of a large proportion of the village houses or sites. The Revenue Officer is powerless to disturb the possession. A poor ryot claims land for building a house, and founds his claim upon the fact of possessing no site for the purpose, or else of having in former times owned the site either himself or through his ancestors. The claimants have to be referred to a Civil Court, although it is apparent that the claim is one which the Divisional Revenue Officer ought to be empowered to decide. We are of opinion that all disputes regarding nattam lands should be expressly removed from the jurisdiction of Civil Courts, and that the Revenue authorities should be empowered by

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law to decide them equally as they are empowered to decide suits regarding the offices and claims of village servants. The very name of gârm-nattam implies the object for which the land is intended, namely, for the erection of a village. As long as the land is employed in that object, the villagers should be undisturbed; but as soon as the land is misemployed by the conversion into cultivation of what is intended merely for building, so soon we think should the occupier lose all right to the possession of the land from which the Revenue authorities should be empowered to summarfly eject him. We have heard it proposed to impose an extraordinary tax on all nattam lands misemployed for cultivation, and so, in fact, to prohibit their use for any other purpose but for that of building. We do not, however, think that this would be sufficient. We would urge that it be distinctly laid down that the right of Government in all nattam lands is paramount, and that those lands can be resumed by the Government as soon as they are misapplied in such way as the Government pleases. To impose a prohibitory tax would no doubt have the effect of restricting the cultivation of village sites, but it would be doing it on a different principle, and would be recognizing the right of the villager to do what he likes with nattam lands, provided only he pays the extraordinary assessment. The short account we have given of the South Arcot riots shows the importance attached by villagers to their grâm-nattam lands, and we do not doubt that the reforms we propose would at first meet with considerable opposition. It must, however, be remembered that the order of Mr. Ashton above alluded to was calculated to benefit Government only, whereas the reform we advocate is to benefit the people themselves. The opposition it would meet with would probably come from the more wealthy and influential ryots, whose object it is to monopolize as much of the village site as they can, and thereby to exclude from enjoyment of the cultivable land attached to the village as many rivals as possible. Under the present state of things it is possible for a wealthy ryot to own the entire space of ground allotted for village site if it so happen that he can induce his fellow-villagers to alienate the sites or houses in their possession by sale, gift, or transfer. That this state of things exists in many villages is an undoubted fact. One family often raises itself above the other ryots, and becomes the virtual possessor of the whole site. It is apparent that this is a state of things which is entirely opposed to what ought to exist, and it is a state of things in our opinion which we believe has to a certain degree been brought about by the proclamation of Mr. Dent, above quoted. This proclamation, by merely penalizing cultivated nattam lands by the imposition of the highest poonjah assessment, in reality affords no check to the misapplication of village sites. We are not aware that this tax is generally levied, and, even if it were, it is so small, that the penalty would be of no avail. We would wish to see it clearly laid down that whoever may be the temporary occupier, the possession of the land still remains vested in the Government. The occupier should merely be allowed to hold the land upon trust. At present this possession is a rock upon which many Revenue Officers split. Grâm-nattam lands, even if left vacant, are generally used in some way or another, either for the deposit of sweepings or for cattle-sheds. If a ryot lays claim to any of such vacant land, his claim is met by an opposing one, namely, that of the possession of the villager who places his sweepings or ties up his cattle on the ground. Many officers do in fact treat this as an actual possession, and refuse to give the land to the applicant who requires it for building purposes; others again, and, we think, rightly, consider such

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a use of the land to constitute no possession, and order the land to be given to the applicant who requires it for the purpose for which it was intended. In cases of this kind, however, the Revenue Officer's order is generally reversed by the Civil Courts, which regard this as a *bonâ fide* possession. The right of Government to nattam lands becomes, therefore, in truth no right at all, and the misapplication of the land of the stronger or more wealthy ryot becomes a constant means of oppression to the poorer and weaker villager. What we advocate, in the interests of the country at large, is that the practice should be uniform, and should be of such a nature as to protect the absolute right of Government to dispose of grâm-nattam lands for building purposes only.

CORRESPONDENCE.

To the Editor of the Madras Revenue Register.

SIR,

I have just become a subscriber to the *Madras Jurist* and *Revenue Register*, and request your assistance in a difficulty which occurred to me in reading the report of the case before the Privy Council in the *Revenue Register* of 15th September 1869, the Neikarapatu Agraharam tenure.

The plea of the defendant of "no jurisdiction" has been overruled by the Lords Justices on the ground that the agraharam was not one conferred by the Governor in Council, and that, therefore, the case was not one contemplated by Regulation IV of 1831, and that it was consequently within the jurisdiction of the Civil Court.

But I find that the provisions of Regulation IV of 1831 were extended to the case of similar grants which, having been made by any Native Government, have been confirmed or continued by the British Government by Regulation XXXI of 1836.

It would appear that the Neikarapatu Agraharam was such a native grant, and, being such, that the jurisdiction of the Civil Court was barred.

Hoping to see the explanation of this in the columns of the next *Register*,

I am, Sir,
Yours faithfully,
M. C. S.

OOTACAMUND,
29th October 1869.

We must apologize for not having attended to this letter earlier. It got misplaced among our papers, and was thus lost sight of. As to the enquiry of our correspondent, we have reason to think that Counsel unaccountably failed to urge the point in Privy Council.—ED. R. R.

HIGH COURT—MADRAS.

SCOTLAND, C. J., AND INNES, J.

Landlord and Tenant—Puttah—Right of occupancy—Alienation.

A muttadar brought a suit for the recovery of his land from the mortgagee of his tenant, alleging that his tenant had no alienable interest in it. The Civil Judge found that the tenant was a puttadar, and had, as such, a right to alienate it.

HELD *(confirming the decision of the Civil Judge) that the tenancy of an ordinary puttadar, when properly created, entitles the tenant to the right of occupancy for the purpose of cultivation until default of payment of rent, and that it may be determined upon such default under Section* 41 *of Act. VIII of* 1865, *or at any time of the landlord's acceptance of a surrender by the tenant in writing under Section* 12; *that such right is assignable as a mortgage security, or otherwise, like any other interest in land, when there is no express agreement between the landlord and tenant to the contrary; that the assignee can claim no other rights than those possessed by the tenant; that he cannot throw the burden of the mortgage debt upon the landlord, his only security being the title and interest of the tenant; and that on the legal determination of the tenancy, he should look to the tenant for payment of what may be due.*

S. A. 126 *of* 1869.

Vencataramier *v.* Anautha Chetty and another.

THIS suit was brought by the plaintiff to recover certain land attached by second defendant in execution of a judgment-debt payable by first defendant. Plaintiff stated that 9 years ago first defendant leased the property, agreeing to surrender it on demand, and further that in Fusly 1274 first defendant relinquished the property as being unable to cultivate it. First defendant was *ex parte*. The second defendant pleaded that first defendant, who enjoyed the property under a puttah, had a proprietary alienable right; and that, even if the relinquishment did actually take place as alleged by the plaintiff, it was one subsequent to the mortgage, on which the second defendant's decree was passed. The District Munsiff of Tripatur decreed for plaintiff on the ground that the first defendant's tenancy was one at will, and the second defendant's mortgage was invalid. The Civil Judge in appeal found that the first defendant was not a mere common tenant but a puttadar, and, as such, he was competent to mortgage his

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land. He was of opinion also that his (first defendant's) subsequent relinquishment was a fraud upon the mortgagee; that no actual surrender took place; but that, if the plaintiff desired to take possession on the ground that the first defendant ceased to hold the land, he could only do so subject to the mortgage interest which the first defendant created, that is, by paying off the second defendant's mortgage. The plaintiff presented a special appeal to the High Court, who delivered the following

Judgment:—6th December 1869.

This was a special appeal from the decree of the Civil Judge of Salem reversing the decree of the District Munsiff in a suit in which the plaintiff sought to invalidate the attachment at the instance of second defendant of certain land, as being the property of the first defendant, in enforcement of a decree for the sale of the land in satisfaction of a debt secured by a mortgage executed by the latter to second defendant.

The effect of the decree of the Civil Judge was to dismiss the plaintiff's suit.

The plaintiff claimed as muttadar, and stated that the first defendant had been merely his tenant-at-will and could not encumber the land with the mortgage to second defendant. The District Munsiff found that there was only a tenancy-at-will, but the Civil Judge came to the opinion upon the evidence that first defendant was the registered holder of the land, and that plaintiff had no right of re-entry so long as the assessment was regularly paid, or until first defendant gave in writing a surrender of the land; that the first defendant had, therefore, an interest which he could mortgage, and which was not determinable after the mortgage by a surrender on the part of the first defendant without payment of the mortgage-debt.

The ground of special appeal relied upon at the hearing was, that the first defendant had no tenant right or interest in the land of which he could make a transfer or mortgage valid as against the plaintiff, his landlord. Now, his tenancy has been found by the Civil Court to have been that of an ordinary puttadar, and we apprehend the established general rule of law in this Presidency to be that such a tenancy when properly created entitles the tenant to the right of occupancy for the purpose of cultivation, until default in payment of the stipulated rent at the time it becomes due, and that it may be determined upon such default under Section 41 of Madras Act VIII of 1865, or at any time by the landlord's acceptance of a surrender by the tenant, which is required to be in writing by Section 12 of the same Act. The first defendant, then, had clearly a right to hold the land as tenant for a conditional term; and we see no reason why that right should not be assignable as a mortgage security or otherwise, like any other interest in land, when there is no express agreement between the landlord and the tenant to the contrary, nor are we aware of any authority prohibiting it. The assignee can claim no other rights than those possessed by the tenant, and is subject to the same conditions and obligations. He can never, as the Civil Judge seems to have thought, throw the burthen of the mortgage-debt upon the landlord. His only security is the title and interest of the tenant, and, as soon as the tenancy has been legally determined, he can only look to his debtor (the original tenant) for payment of what may be due, and, of course, the purchaser of the right, title, and interest of the original tenant at a sale in execution of a decree for the mortgage-debt could claim nothing from the landlord that the tenant would not have been entitled to claim, and would be liable to the rent and to be ejected if he failed to pay it.

In the present case, the tenancy of the first defendant appears to have been a valid and subsisting one when he executed the mortgage assignment to the second defendant; and we are of opinion that it was effectual to pass, as it purports to do, the rights and obligations of the first defendant as tenant of the land, and that the verbal surrender by the first defendant after the assignment was known to the plaintiff cannot be relied upon as rendering it void. For these reasons the decree appealed from must be affirmed.

HIGH COURT—CALCUTTA.

PEACOCK, B., C. J., AND MACPHERSON, J.

S. M. Padamani Dasi *v.* S. M. Jagadamba Dasi.

*Landlord—Tenant—*8 *Anne, Clause* 14*—Act VII of* 1847*—Claim for Rent.*

Two daughters, as co-partners, were owners of certain property, each having an eight-anna share therein. On June 30th, 1868, *they executed a lease of the property, in which it was provided that a monthly rent should be paid in separate payments to each of the two owners respectively, they giving separate receipts for the same. The tenant having failed to pay rent, one of the owners brought a suit for her share in her own name only, and obtained a decree. In execution of this decree, she seized and sold property belonging to the tenant.*

The sale took place on the 12*th of February* 1869. *On the* 15*th of February the other owner brought an interpleader-suit, the tenant having likewise failed to pay rent to her. She claimed to have what was due to her paid out of the proceeds realized by the sale under the decree.* HELD, *that she was not entitled to have it so paid.*

HELD *also, per* PEACOCK, C. J.*—The Statute,* 8 *Anne, Clause* 14, *does not apply to this country.*

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HELD, *it would not at any rate apply to a case in which a claimant seeks to enforce payment of her rent from another creditor for rent, even if it would where the claim was against an ordinary execution-creditor.*

THIS was a case referred for the opinion of the High Court by the 2nd Judge (Mr. N. Thomson) of the Small Cause Court. The case was stated as follows:—

"On the death of Rasmani Dasi, her two daughters, Padamani and Jagadamba, inherited certain immoveable property situate in Calcutta, including an upper-roomed house and premises, No. 2, Pollock Street. No partition of the property has been made, but each of the daughters, as co-partners, possesses an eight-anna share therein. On the 30th June 1868 a lease of the house and premises aforesaid, for a term of three years, was executed by Padamani and Jagadamba in favour of W. J. Rowe, in which lease it was provided that a monthly rent of Rupees 215 should be paid by the tenant, in separate payments of Rupees 107-8, to Padamani and Jagadamba respectively, who were to give separate receipts for the same. Rowe having failed to pay rent to Jagadamba in accordance with the terms of the lease, a suit for the half share of the rent, which has accrued due to her up to the end of December 1868, was brought by Jagadamba in her own sole name, on the 14th January 1869, in which she obtained a decree for Rupees 485-12 inclusive of costs, in execution whereof she seized and sold property belonging to the tenant. The net sum of Rupees 677-13 realized by this sale is at present held by the Court in deposit. The seizure in execution took place on the 30th January, and the sale on the 12th February 1869. Mr. Rowe having likewise failed to pay rent to Padamani, the latter, upon the 15th February, three days after the sale in execution of Jagadamba's decree, under the provisions of Section 88, Act IX of 1850, and the 35th Rule of Practice of the Calcutta Small Cause Court, brought an interpleader-suit, in which she claimed a sum of Rupees 645 as due to her for six months' rent of the said house from July to December 1868 at Rupees 107-8 per mensem, and sought that it might be paid to her out of the money realized by the sale in execution of Jagadamba's decree. At the hearing of this interpleader claim it was argued in Padamani's behalf that Jagadamba, having elected the remedy of a suit for rent, stood in no different position from any other judgment-creditor in executing her decree; and that the claim of Padamani as a landlord interpleading to enforce her right of lien over the property of the tenant for rent, was a preferable claim to that of any mere judgment-creditor. On behalf of Jagadamba it was replied that her rights as landlord were the same as those of Padamani; that these rights were not altered by the legal steps she had taken; and that, having used greater diligence in enforcing her rights by suit and by execution, she was entitled to retain what she had recovered. It was further contended on her behalf that she had not seized all the property of the tenant in execution of her decree; and that Padamani's claim might have been satisfied out of what remained. It appeared in evidence that a horse belonging to the tenant, which was upon the premises at the time of the execution, had not been taken; and that some time after the same horse was seized in execution by another creditor, and realized a sum of Rupees 150. There was no evidence that any other property was left on the premises. I was of opinion that Padamani, as the owner of an eight-anna share in the property in question, was entitled, under her interpleader, to a moiety of the sum realized under Jagadamba's execution; but Jagadamba's attorney, being dissatisfied with my order, has asked that the case might be referred for the opinion of the High Court, as to whether, under the circumstances above stated, Padamani is entitled to any, and, if to any, to what portion of the sum realized by the execution-sale at the instance of Jagadamba. Subject to the opinion of the High Court on the question referred a judgment has been recorded in favour of Padamani for Rupees 336-6-3, being one-half of the sum realized under Jagadamba's execution."

Mr. *Branson*, for the plaintiff, contended that Jagadamba's execution was not valid under the Statute 8 Anne, c. 14, which he submitted applied to this country.

Mr. *Kennedy* for the defendant.—This is not to be dealt with as a case of English law. The Statute of Anne does not apply in this country, and the claim cannot be made: *Cawler* v. *Chaplin*.* The goods of third parties on the premises of the tenant are not distrainable for rent under Act VII of 1847: *Dwarkanath Biswas* v. *Udditchurn Addy*.† The right of distress did not exist in Calcutta until introduced by Act VII of 1847. By English law it is immaterial whether the execution be against the tenant or any other person.

Mr. *Branson* in reply.—The Sheriff should have retained a year's rent out of the proceeds of goods seized in execution: *Arnitt* v. *Garnett*.‡ Notice that a year's rent is due may be given after removal of the goods: *Yates* v. *Ratledge*.§ The principle is that the rent must be paid in any case. The fact that the plaintiff has a co-landlord makes no difference.

The following was the opinion of the High Court:—

PEACOCK, C. J.—It appears to me that the plaintiff Padamani is not entitled to claim one-half of the sum realized under Jagadamba's execution. If she is entitled to half, I see no reason why she is not entitled to the whole, because she was a landlord entitled to the rent, and Jagadamba was an execution-creditor. I see no greater reason why Padamani should be paid her rent out of the proceeds of the execution than that Jagadamba should be paid her's, even supposing that the Statute of Anne is applicable to houses and lands situate in Calcutta. Although the law of England has been introduced into Calcutta, it is not every law of England that was so introduced. It appears to me that the Statute of Anne was applicable to lands and houses locally situate in England, and that Act, like many other Statutes which apply to lands in England, was not part of the law of England, which was introduced into Calcutta. If it were necessary to determine the question on that ground alone, I should hold that the Statute of Anne did not apply. By Section 89 of the Small Cause Court Act, Act VII of 1847, which regulates distresses for small rents in Calcutta, was extended to the recovery of all arrears of rent, not exceed-

* 2 Exch., 503.
† II. J., N. S., 361.
‡ 3 B. & Ald., 440.
§ 5 H. & N., 249.

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ing Rupees 500; and by a subsequent Act* this law has been extended to rents not exceeding Rupees 1,000. By virtue of the provisions of these three Acts taken together, no distress, except under the provisions of Act VII of 1847, can be levied for arrears of rent not exceeding Rupees 1,000. If Jagadamba had proceeded under Act VII of 1847, and had applied to the Small Cause Court to issue a warrant for the levy of the amount due to her, she might have seized, under the warrant, all the goods which she did seize under her execution. Those goods might have been sold; and, under the provisions of Section 4 of Act VII of 1847, the whole amount of the produce must have been applied in satisfaction of the sums, for which the distress had been levied under the warrant, that is, Jagadamba's distress. It appears to me that the Statute of Anne does not apply to a case like this, in which the claimant was seeking to enforce payment of her rent, not against an ordinary execution-creditor, but against another creditor for rent.

Macpherson, J.—Without expressing any opinion as to whether the Statute of Anne does or does not apply to Calcutta, I am of opinion that it does not apply to this case. The words of the Statute of Anne are that goods are not to be taken in execution, unless the party, at whose instance the execution is sued out, shall, before the removal of the goods from off the premises, pay to the landlord such sum of money as is due to him for rent, provided the arrears do not exceed one year's rent. The first question in this case is, who is the landlord? It appears to me that Jagadamba was as much the landlord as Padamani, and that the provisions of the Statute of Anne cannot apply to a case like this.

Peacock, C. J.—We shall answer the question of the lower Court by stating that Padamani is not entitled to any portion of the sum realized by the execution-sale of Jagadamba, and that Jagadamba is entitled to her costs of this reference.—*Bengal Law Reports, Vol. III, Part XIII.*

Norman and Jackson, E., J. J.

Bhiro Chandra Mozoomdar and others (decree-holders) *v.* Ramundas Mookerjee and others (judgment-debtors.)†

Mesne Profits—Cultivating Ryot.

When a cultivating ryot is ejected by his zemindar, the mere rent of the land realized by the zemindar from another tenant is not necessarily the measure of the damage sustained by the ryot, and recoverable by him as mesne profits.

Baboos *Mahini Mohan Roy* and *Gopal Lal Mitter* for appellants.

Baboo *Srinath Das* for respondents.

The facts are sufficiently clear from the judgment of .

Norman, J.—The plaintiff in this suit obtained a decree for possession with wasilat, or mesne profits. In execution, the lower Court awarded, by way of mesne profits, a sum equivalent to the fair and reasonable rent of the entire land, not only of that which was actually occupied by ryots, but also of that which was not cultivated, but which the lower Court thinks might have been cultivated or let to tenants by the defendants.

In special appeal it is objected that the calculation of wasilat proceeded upon a wrong principle. It is urged that the plaintiffs prior to, and at, the time of dispossession were cultivating ryots, and that if they had not been wrongfully dispossessed from the land, they would have realized an amount of profits far exceeding that which the defendants had realized.

It is urged very ingeniously and sensibly by the vakeel for the appellant that in a suit by a ryot who is dispossessed by the zemindars, the mere amount of rent received by the zemindar during the period of dispossession is no measure of the damages sustained by such ryot by being dispossessed. It was pointed out that if the ryot held at the full rate of rent capable of being realized from the land, and the zemindar after dispossessing him should let the land to other people at the same rate, and if, in assessing the wasilat or damages, the rent payable to the zemindar were deducted, and the sarunjami or collection charges were likewise allowed, as has been done in this case, the ryot, though he might have sustained serious injury and loss by being turned out of the land and deprived of his means of making a livelihood, would actually get nothing from his landlord. Therefore it follows that the amount of rent collected by the landlord is not necessarily the measure of damages. In Sedgwick on Damages* it is said that in an action of trespass for mesne profits, which is an action for damages, "the jury are not "confined in their verdict to the mere rent of the "premises, but may give such extra damages as "they think the particular circumstances of the "case demand. So in an early case in England, "*Goodtitle* v. *Tombs*† it was said: The plaintiff "is not confined in this case to the very mesne "profits only, but he may recover for his trouble. "I have known four times the value of the mesne "profits given by a jury in this sort of action of "trespass; if it were not so, sometimes complete "justice could not be done to the party injured." The difficulty which the special appellant has to contend against is, that he has not put his case in the way in which it is now put by his vakeel. He has not asked for, or obtained, any decree or order for the assessment of his damages on the footing on which, he now says, they ought to have been assessed. He has sued for and obtained a decree for mesne profits only, and has accepted without objection a remand directing an enquiry into the amount of the mesne profits. We can only take the decree as it stands, and, in so doing, we give to the plaintiff the mesne profits on the rent of the land upon the usual principle. There is, therefore, no ground for interfering with the decision of the Judge on this point.

The special appellant further contended that he being a cultivating ryot ought to have received the entire rent without any deduction of the sarunjami or collection charges, because, if he had been occupying the land, he would have realized the rent, and the collection charges would have cost him nothing.

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* Act XXVI of 1864, S. 4.

† Miscellaneous Special Appeal, No. 539, of 1868, from a decree of the Officiating Judge of Dinagepore, dated the 17th August 1868, amending a decree of the Subordinate Judge of that district, dated the 5th May 1868.

* 4th Edition, 136.

† 3 Wils., 121.

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Unfortunately for the special appellant there are two decisions given by the Judge on two separate appeals from the same judgment passed by the first Court. He has only appealed against one of these judgments, and it is in the judgment which is not brought before us that the Judge made an order allowing sarunjami. We need not, therefore, pronounce any opinion on that point. The appeal will be dismissed; but, under the circumstances, the parties will pay their own costs.

JACKSON, J.—I also think that the appeal should be dismissed. The mesne profits awarded are the damages which the judgment-creditors sustained, as far as the evidence went. It may be that the plaintiff might have been entitled to a higher rate if he had produced sufficient evidence. But he has not done this.—*Idem.*

JACKSON, L. S., AND MARKBY, J. J.

Raja Rash Bihari Lal Sing (one of the defendants) v. Nabayi Paddar (plaintiff) and others (defendants.)*

Suit for Possession—Sanad—Evidence—Special Appeal.

In a suit for recovery of possession of certain land which the plaintiff claimed under, and by virtue of, a sanad (grant) from the zemindar, and from which he had been dispossessed by the defendants, the lower Appellate Court held that the execution of the sanad was not satisfactorily proved, but that it was not a forgery, and that there was other corroborative evidence (such as dakhilas produced before it) to prove the case of the plaintiff.

HELD, *that when a claim is based upon a sanad, and the plaintiff fails to prove the execution of the sanad itself, he may prove his claim by other means. In a suit for mere possession, it is unnecessary to state or to prove a particular title.*

The reception of papers and documents by the lower Appellate Court, unless objected to at the time, cannot be made a ground of special appeal.

Shiu Dyal Puri v. *Thakur Mahabir Prasad*† *and Ramdhan Chuckerbutty* v. *Komal Tara*‡ *distinguished.*

THIS was a suit to recover possession of certain land, and also for damages to certain timber cut and taken away by the defendants which stood upon the said land, upon the allegation that the plaintiff had obtained a sanad from the Zemindar (Rajah) under which he had obtained possession, from which he was subsequently ousted by the defendants.

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* Special Appeal, No. 2,742, of 1868, from a decree of the Deputy Commissioner of Manbhoom, dated the 18th July 1868, reversing the decree of the Munsiff of Raghunathpore, dated the 26th of February 1868.

† 2 B. L. R., App., 8.

‡ BAYLEY AND HOBHOUSE, J. J.

Ramdhan Chuckerbutty (plaintiff) *v.* Srimati Komal Tara (defendant.)§

The 3rd April 1869.

Unless a plaintiff can prove the particular title set up by him, he is not entitled to a decree.

Baboos *Ramesh Chandra Mitter* and *Nalit Chandra Sen* for appellant.

Baboo *Srinath Banerjee* for respondent.

HOBHOUSE, J.—In this case the plaintiff alleged that there was a shikmi taluk called Ramjai Pal; that on the 2nd Falgoon 1244 he had purchased from the proprietors of that taluk one drone of land within the taluk, and that, under the conditions of his purchase, he was what he calls an *Agguth* Talukdar, paying a rental of Rupees 8 to the proprietors. He then went on to state that in execution of a decree against Ram Lochan Pal, a representative of a proprietor of this taluk, the defendant, special respondent, had purchased the rights of the said Ram Lochan, and, under colour of an order of Court of 31st July 1866, had dispossessed the plaintiff of the one drone in question.

The defendant denied that the plaintiff was the *Agguth* Talukdar he alleged himself to be, and stated that the taluki lands in question were the property of Ram Lochan Pal, the judgment-debtor.

The first Court found that the plaintiff had been in possession of the lands since the year 1244, and inferred from thence that the plaintiff was the *Agguth* Talukdar he alleged himself to be, and gave him a decree for possession.

By the alleged document of 1244, not the whole of the shareholders, but certain of the shareholders of the taluk, purported to convey the lands in question as their share to the plaintiff. It is necessary to state this in order to understand correctly the reasoning of the lower Appellate Court's decision. That Court says that it cannot give the plaintiff a decree. First of all it says that it cannot give him a decree, because it is not proved that the sharers in the taluk who were said to have conveyed the lands to the plaintiff, held those lands in separate portions. Neither can the Appellate Court, it says, give the plaintiff a decree as an *Agguth* Talukdar, because the plaintiff's vakeel points out to him that the plaintiff does not now call himself an *Agguth* Talukdar, but a sharer in the original taluk. Neither, the Appellate Court says, can it give plaintiff a decree as a talukdar having a share in the taluk, because the Court does not find any proof as to the extent of the share. Neither, the Appellate Court says, can it give the plaintiff a decree as an independent talukdar, for that is not his position; and in conclusion the Court says that in this case it finds no evidence as to the creation of an *Agguth* Taluk, nor any evidence as to the plaintiff's having purchased any such specific shares in the taluk as entitled him to a decree. The lower Appellate Court, therefore, dismissed the suit with costs.

In special appeal there is in reality but one contention before us, and it is this, viz., that when there was evidence on the record that the plaintiff had been in possession of the lands in dispute in some one capacity or other, for a period of something like 32 years, it was incumbent on the lower Appellate Court to re-place the plaintiff in that possession, unless the defendant could show a better title, under which he could keep the plaintiff out of such possession.

A great number of the precedents of this Court and of the Court of the Judges of Her Majesty's Privy Council has been quoted to us on the question of possession, and the effect of these precedents seems to us to be that, other things failing, possession is a good evidence of title unless some better evidence is shown, and we are not prepared to dissent from this proposition; but the question is, it seems to us whether it can be applied to the present case, and we are of opinion that it cannot. In this case the plaintiff did not come to Court on the ground simply of previous possession of the lands in dispute, but came to Court upon a distinct and a definite title, and, had that title been proved, had the plaintiff been put in possession under it, the effect of the decree would have been that the plaintiff would have been a tenant of the lands in dispute paying a quit-rent to the defendants representing the talukdars, and nothing more; and under no liability to have his rents increased. Unless, therefore, the plaintiff was able to prove the case which he set up, we think he was not entitled to a decree, and he entirely failed to prove that case. He produced a document of the year 1244, but he did not show whence that document came from, in whose custody it had been, and how he became possessed of it, nor did he even swear that he even became possessed of it himself. Neither did he prove that he had been in possession of the lands in dispute under the title of *Agguth* Talukdar which he set up, for the very persons who professed to have paid rents for the lands to the

§ Special Appeal, No. 2,867, of 1868, from a decree of the Judge of Tippera, dated the 21st August 1867, reversing a decree of the Principal Sudr Ameen of that district, dated the 17th February 1867.

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The defence set up was that the jungle appertained to the *mal* (rent-paying) land of the Rajah, and that, according to his permission, all the tenants in the village cut wood in the said village.

The Munsiff dismissed the suit.

On appeal the Officiating Deputy Commissioner held that the oral evidence brought forward to prove the execution of the sanad was untrustworthy, but that the sanad was not a forgery; that it bore every appearance of being genuine; that the dakhilas produced before him afforded a strong corroborative evidence in favour of the plaintiff as proving continued possession and payment of rent. He accordingly decreed the suit

Baboo *Bansidhar Sen* for appellant.

Baboo *Debendra Narayan Bose* for respondent.

JACKSON, J.—In this case three grounds of special appeal have been urged before us. The first of them is, that the plaintiff having failed to establish the particular title under which he sued, ought not to have had a decree; secondly, that the lower Appellate Court was wrong in taking the dakhilas put in by the plaintiff in that Court as evidence, inasmuch as they were neither proved nor admitted; and thirdly, that the oral and other evidence in the case were insufficient to justify the decree passed.

The plaintiff alleged that upon the Rajah whom he made a *pro formâ* defendant in this suit desiring to re-claim a portion of waste land, the plaintiff undertook to do it, and commenced clearing a portion of the land and putting up an embankment, and thereupon the Rajah gave him a sanad to hold that land at a quit-rent of 2 Rupees per annum, and also to cut and use jungle thereon; but afterwards the principal defendants commenced a dispute with him about this jungle land, and cut down some jungle therein, and dispossessed him of the land on the eastern side of his grant; that he had made a complaint on this subject to the Police authorities who referred him to a civil suit, and consequently he sued to recover possession of the land in question, and for damages that he valued at 5 rupees, the land being valued at 15.

The Munsiff dismissed the suit; but on appeal the Deputy Commissioner, who is also Subordinate Judge, reversed that decision and gave judgment for the plaintiff to the full amount of his suit. It may be observed, however, that the decree itself only orders the plaintiff to be re-placed in possession of the land, being silent as to damages, and also awards him costs.

The first ground of appeal above mentioned proceeds on the circumstance that the plaintiff did not prove the sanad mentioned in the plaint, to the satisfaction of the lower Appellate Court; and it is contended that, as the sanad itself was not proved, the particular title depending on that sanad must fail, and the suit ought to have been dismissed.

We are referred to some cases, *Shiu Dyal Puri* v. *Thakur Mahabir Prasad** and *Ramdhan Chuckerbutty* v. *Srimati Komal Tara*,† in which it was held that the particular title set up by the plaintiff being unproved, he would not be entitled on proving mere possession to a decree as under the particular title claimed. That ruling, I think, quite correct. But it is one thing to say that a party must prove the particular title which he sets up, or that mere possession will not prove a particular title, as, for instance, possession will not prove a mokurari title; but it is quite another thing to say that a party who claims to hold land by a grant, such grant being evidenced by a sanad, and then fails to prove the execution of the sanad itself, may not prove the same grant by other means.

But it is to be observed also in this case that the decree complained of does not declare the plaintiff entitled to hold the land in dispute on any particular terms, or for any particular time. It merely orders him to be re-placed in possession of the same with costs of suit. It seems to me that the Court below might lawfully and regularly give such a decree, although the plaintiff failed to prove the execution of his sanad.

Then, as to the evidence of possession consisting of dakhilas put in in the lower Appellate Court, it is contended that these dakhilas were never proved, and we are asked to assume that the Judge has accepted those dakhilas simply on their being produced by the plaintiff in his Court, either without admission by the defendant, or in spite of his remonstrance. I think we ought not to assume that the Judge has done either the one or the other. In a case of this sort, where the appellant is really aggrieved by the conduct of the lower Appellate Court, we should expect him to satisfy us that he had taken the objection to the reception of the papers; that he had protested against their being received, and that they had been received in spite of his protest.

I, therefore, think that the decision of the lower Appellate Court is right, and ought to be affirmed with costs.

MARKBY, J.—I am of the same opinion. I think the distinction between this case and the cases *Shiu Dyal Puri* v. *Thakur Mahabir Prasad*‡ and *Ramdhan Chuckerbutty* v. *Komal Tara*§ is quite clear. There the plaintiff was seeking to have declared in his favour a particular kind of right, in one case a mokurari tenure, and, in the other case, a particular kind of talukari right, and, of course, the very essence of each of those cases was that the plaintiff should show the existence of that particular right before he could have it declared in his favour. But in this case the plaintiff seeks for no declaration at all. He only asks to be put into possession; and I observe that the learned Judges who decided the case of *Ramdhan Chuckerbutty* v. *Komal Tara*§ expressly recognize the principle that possession may be evidence of title.

plaintiff did not know the capacity in which the plaintiff received those rents, and the plaintiff himself ignored his own title, and endeavoured at the last moment, before the lower Appellate Court, to set up an entirely different title; and further, we think it is quite clear from the records of the case that the plaintiff did not before the lower Appellate Court set up the mere fact of a possession of some kind as giving him a title to a decree, but set up only and distinctly a possession of a particular kind which it is admitted, and it is found he was altogether unable to prove.

We think, therefore, that, whatever may be the legal effect of previous possession in suits generally, the plaintiff in this particular instance could not, and, indeed, did not, set up that general possession upon which it is urged by his pleader before us now that we ought to direct the Court to give him a decree, if on remand the Court shall find on evidence on the record that the plaintiff had proved merely a general possession.

We dismiss the special appeal with costs.

* 2 B. L. R., App., 8.
† See p. 99, *ante*.
‡ 2 B. L. R., App., 8.
§ See p. 99, *ante*.

I may observe also that so far as relates to the objection that the plaintiff did not prove the particular title which he alleged in his plaint, that it was quite unnecessary for the plaintiff to state in his plaint what his title was. The precedent as given for plaints in the Code of Civil Procedure for cases like the present does not set out title, and the plaintiff having done so was not bound by it; but, having brought his suit for possession, it was, I think, open to him to prove by possession a title sufficient to recover against the defendant.

As to the other objection, I think the rule which has been acted upon, at least since I have sat on this Bench, is the right one, namely, to presume that the lower Court has done its duty; and if a vakeel takes upon himself to say that he has not done so, he must give something tangible, something more than mere suggestion, before he can induce us to interfere. In most cases, however, as in this, vakeels do not even go so far as to assert on their own responsibility that the lower Court has committed the error of which they complain.—*Idem.*

SHORT NOTES OF CALCUTTA CASES.

NORMAN AND JACKSON, E., J. J.

Ranglal Sahu and another (two of the defendants) *v.* Siali Dhar Das (plaintiff.)*

Measurement—Lakhiraj—Act VI (B. C.) of 1862.

A zemindar is not entitled to measure the lands of a lakhirajdar holding a rent-free tenure within the limits of his estate.

Baboo *Debendra Narayan Bose* for appellants.

Mr. *C. Gregory* for respondent.

THE facts are set forth in the judgment following:—

NORMAN, J.—This is a suit brought under Section 9 of Act VI (B. C.) of 1862, by which the plaintiff made an application to the Collector, praying him to allow the measurement of certain lakhiraj land, and to enjoin the attendance of the special appellant, Ranglal Sahu and others. It appears that the plaintiff purchased an estate, No. 866 in the Towji Register, situated in Mauza Jairampore, Pergunna Sripore, at a sale for arrears of rent. The defendants held 82 bigas of land rent-free, and have obtained a decree declaring their right to hold the lands as lakhiraj.

The first Court made an order that the defendants "should be present and get the disputed land measured by the plaintiff." That decision was affirmed by the Judge. He says, "that the plaintiff has a right to measure the land appertaining to 866 of the towji, and if the plaintiff measures, takes possession, and assesses any land which may have been decreed to the appellants by the Civil Court, the appellants have their remedy; but the plaintiff is not debarred from measuring whatever lands may still belong and pertain to No. 866 in the Collector's Towji."

We are of opinion that the decisions of the lower Courts are erroneous, and must be reversed.

In order to determine whether the appellant has a right to measure the lands of the lakhirajdar before proceeding to consider the language of that section, it is necessary to observe that no man has any natural right to go upon land, which is the exclusive property of another, or to measure it without his permission. If such a right exists in any case, it is one which must be created by some legislative enactment. Can we find words creating such a right in Section 9? We think not. Section 9 says, "Every *proprietor of an estate* or tenure or other person in receipt of the rents of an estate or tenure, has a right of making a general survey and measurement of *the lands comprised in such estate* or tenure or any part thereof, unless restrained from doing so by express engagement with the occupants of the lands." Can it be said that, according to the common understanding of men, if a person occupies lakhiraj or rent-free land adjacent to another's estate, but not shewn to be dependent on it, or in any way connected with it, that the lakhiraj lands are comprised in the estate? In the present case, the lands in Towji 866 are stated to be resumed lakhiraj mehal, in which the 82 bigas of land now in question were supposed to be included. The defendants have since, by a regular suit, established their title as lakhirajdars. The result is that they are holding an estate wholly distinct from, and unconnected with, the lands held by the plaintiff under the settlement of Towji No. 866.

It appears to us that in no sense can the defendant's lands be said to be comprised within that settled estate. Reading Section 9, in order to see what are the powers of the Collectors, an additional argument presents itself in support of the view we take. The Collector, if the case so requires, is to pass a decision enjoining or excusing the attendance of under-tenants or ryots, not of all persons occupying land within the ambit of the estate. Under such circumstances, we reverse the decision of the lower Courts, with costs in all the Courts, and interests.—*Bengal Law Reports, Vol. III, Part XIII.*

KEMP AND GLOVER, J. J.

Charles Macdonald (one of the defendants) *v.* Rajaram Roy and others (plaintiffs.)*

Jurisdiction of Civil Courts and Revenue Courts—Suits to recover possession of land.

In a suit in the Civil Court, to recover possession of lands, which, the plaintiff alleged, he had leased to the defendant or manager of an indigo factory, and also of other lands over which he had given a zuripeshgi lease, HELD *that the suit was rightly brought in the Civil Court, and that the Revenue Court had no jurisdiction.* HELD *also that, as the defendant had made no objection to the manner in which plaintiff had calculated damages in the Courts below, the question could not be gone into in special appeal.*

Mr. *R. T. Allan* for appellant.

Baboos *Chandra Mudhab Gose* and *Ramesh Chandra Mitter* for respondents.

THE facts of this case sufficiently appear in the judgment of

* Special Appeal, No. 2,450, of 1868, from a decree of the Judge of Purneah, dated the 26th June 1868, affirming a decree of the Deputy Collector of that district, dated the 25th of March 1868.

* Special Appeal, No. 3,251, of 1868, from a decree of the Judge of Tirhoot, dated the 9th June 1868, reversing a decree of the Principal Sudr Ameen of that district, dated the 19th December 1867.

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Glover, J.—The plaintiff in this suit is a co-sharer in a certain mauza in Zilla Tirhoot, and his suit is to recover possession of 72 bigas, 1 kata, 3 dhoors of land from the defendants in this wise:—The allegation of the plaintiff is that, in the year 1269, he leased his share of the estate to the defendant, the manager of an indigo factory, and along with that share, likewise leased to him certain zerayat lands, which he cultivated himself within the mauza as a ryot; that at the time of the expiration of the zuripeshgi lease, the defendant gave back to him possession of his share of the estate, but retained the zerayat lands; and to recover these, the present suit is brought. The defendant's statement is that the lands which the plaintiff asserts had been given to him (defendant) along with the pati were never held by the plaintiff, but were the lands of one Gandowr Sing, a co-sharer in the estate from whom the defendant holds.

The first Court dismissed the plaintiffs' suit, but the Judge, on appeal, found that the 72 bigas in dispute comprised the zerayat cultivation of the plaintiff apart from his share in the estate; that these lands were identical with the land which the defendant claimed to hold from Gandowr Sing; and that the plaintiff was entitled to possession.

In special appeal it is contended in the first place that, as this suit assumes the relationship of landlord and tenant between the plaintiff and defendant, the suit was not cognizable by the Civil Courts, under Act VIII of 1859, but should have been instituted in a Revenue Court, under Act X of 1859; and, secondly, that, supposing the suit to have been rightly brought in the Civil Court, it was incumbent on the plaintiffs to show a distinct title for these particular lands, inasmuch as the defendant claims to hold from Gandowr Sing, who is not shown to be other than a shareholder in the estate, and that the defendant, holding through Gandowr Sing, would have, at least, a joint interest in the mauza, and thus a sufficient title to defeat the plaintiffs' suit. With regard to the first objection, we find that the plaintiffs never considered or said that they considered the defendant as their tenant; on the contrary, their allegation was that, from the date of the expiration of the zuripeshgi lease, the zerayat lands had been forcibly withheld from them by the defendant, who, from that time, was a trespasser, and the defendant, from the very first, distinctly repudiated the relationship of tenant to the plaintiffs, alleging that he held from a third party. We think, therefore, that this suit was undoubtedly cognizable by the Civil Courts, and that the Revenue Courts had no jurisdiction in the matter.

With regard to the second objection, the Judge finds as a fact on the evidence, that the 72 bigas, which the plaintiffs now claim, formed the plaintiffs' cultivation, exclusive of his share in the estate; that this was the land which the plaintiffs made over to the defendant at the time of giving the zuripeshgi lease, and that the defendant has not returned, but still holds possession of that land. It is a notorious fact that, in the Behar districts, co-sharers in estates frequently hold land in cultivation over and above their share in the estate; they cultivate these lands themselves, as ryots paying rent as such to all the co-sharers, including themselves; so that, supposing Gandowr Sing, from whom the defendant claims to hold, to be a shareholder in the property, the only interest he could possibly have in these 72 bigas (after the finding of fact come to by the Judge) would be his right to receive a proportionate share of the rent of the land.

On the facts as found, it is clear that the lands which the plaintiffs claim did not form the pati or share of Gandowr Sing, and could not have been eased by Gandowr Sing to the defendant as forming that share.

A further objection was taken by the special appellant's pleader to the amount of damages; with reference to it, he relied upon a Full-Bench decision of this Court, in the case of *Ranee Asmed Kooer* v. *Maharanee Indurjeet Koor*.* It is possible that, had this objection been pressed below, or, indeed, at any stage of the proceedings, (for it does not appear to have been taken in the grounds of special appeal), the ruling referred to might have had some application, and that the most the plaintiff could have recovered would have been the amount of a fair and reasonable rent for the land, as if the same had been let to a tenant during the period of the unlawful possession of the wrongdoer: but we find, on referring to the Judge's decision, that no objection was ever taken to the amount of damages claimed by plaintiffs, and the plaintiffs' patwarri had given evidence as to the nature and the extent of the crops which could be grown on the land during the period for which damages are claimed.

As, therefore, the defendant chose to rest his case entirely on the ground that he held the land from Gandowr Sing, and that the 72 bigas were not the property of the plaintiffs, and did not take any exception to the way in which the plaintiffs had calculated the damages he alleged himself to have sustained, we do not think that, at this late stage of the case, and specially considering that we are now in special appeal, we should be justified in re-opening the proceedings, or in applying a principle which the special appellant himself never asked to have the benefit of. The special appeal must be dismissed with costs.—*Idem.*

Norman and Jackson.

Tetai Abom (one of the defendants) *v.* Gagai Gura Chawa (plaintiff.)†

Endorsement of Transfer—Stamp Act.

Transfer of an under-tenure, endorsed upon the back of the tenant's patta, is not admissible in evidence, unless it be stamped, as though it were a separate deed.

Baboo *Abhaya Charan Bose* for appellant.
None for respondent.

The judgment of the Court was delivered by

Norman, J.—The plaintiff sues for the possession of 30 bigas of land, which he alleges that he purchased from the defendant's father on the 4th of May 1863 for Rupees 12. As evidence of the purchase he puts in a transfer endorsed upon the potta by the defendant's father. The lower Appellate Court, reversing the decision of the Munsiff of Sibsagur, has given the plaintiff a decree, relying upon the endorsement as proving that the defendant's father transferred the patta to the plaintiff.

* Case No. 362 of 1867; April 4th, 1868.

† Special Appeal, No. 2,074, of 1868, from a decree of the Deputy Commissioner of Sibsagur, dated the 8th May 1868, reversing a decree of the Munsiff of that district, dated the 16th May 1867.

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The objection taken before us is that this endorsement has been rejected by the first Court upon the ground that it was not stamped; and, as such, it was improperly admitted in evidence by the lower Appellate Court. Baboo Abhaya Charan Bose, the appellant's vakeel, refers us to Section 14 of Act X of 1862, by which it is provided that no deed, for which any duty shall be payable under Section 2 of this Act, shall be received as creating or transferring any right, or as evidence in any civil proceeding in a Court of Justice, unless such deed, instrument, or writing shall bear a stamp of a value not less than that indicated to be proper for it by the schedule annexed to the Act. Under the 23rd clause of Schedule A, a conveyance, or instrument of any description whatever, executed for the sale or transfer, for a consideration, of any land or other property, moveable or immoveable, or of any right or interest in any land, when the purchase-money therein expressed shall not exceed Rupees 100, shall bear a stamp of 1 Rupee. The plaintiff's case is that this endorsement on the patta was an instrument of transfer for a money-consideration of the land to which the patta relates, and, therefore, according to the plaintiff's own case, it required a stamp of 1 Rupee. We think the objection taken by the appellant's vakeel is well founded. The instrument in question is not admissible in evidence; and as the rest of the evidence is not consistent with the defendant's case, which is that this property came into his hand as khurdua, *i. e.*, executor, manager, or trustee of the defendant's father, we reverse the decision of the lower Appellate Court, and dismiss the suit with costs.—*Idem.*

KEMP AND GLOVER, J. J.

Nanku Roy (plaintiff) *v.* Mahabir Prasad and others (defendants.)*

Suit to reverse an order of the Revenue Court—Jurisdiction of Civil Court.

Parties suing to reverse an order of the Revenue Courts may do so in the Civil Courts.

Baboo *Ramanath Bose* for appellant.

Baboo *Kali Krishna Sen* for respondents.

THE facts sufficiently appear in the judgment of the Court, which was delivered by

GLOVER, J.—This was a suit to recover possession of certain land, from which the plaintiff had been dispossessed by an order of the Deputy Collector, afterwards confirmed by the Collector, under Section 25 of Act X of 1859. On an application made to him by the zemindar, the Court of first instance went into the case, and on the merits decreed the plaintiff's claim; but the Subordinate Judge, on appeal, held that this being a suit to get rid of the Collector's order under Section 25 of Act X of 1859, it was not cognizable in any other Court than that of the Collector, and that the Munsiff had no jurisdiction; he, therefore, reversed the order of the first Court, and threw out the plaintiff's case. It seems to us quite clear that the Principal Sudr Ameen's decision in this matter was wrong. It has been laid down in the case of C. J. Phillips, decided on the 19th June 1863, that a suit to contest the orders of a Collector under Section 25 of Act X may be brought either in the Collector's Court or in the Civil Court as the case may be, and this ruling has been upheld in a Full-Bench decision of this Court in the case of *Mudun Mohan Roy* v. *Gourmonee Goopto** and in many others, which it is needless to mention; parties suing to reverse a Collector's order under that section, may do so either in the Revenue or in the Civil Courts. It is quite clear, therefore, that the Munsiff had jurisdiction to try this case, and that the Subordinate Judge was wrong in setting aside his decision on the ground that he had no jurisdiction.

An objection has been taken by the pleader for the special appellant, that it would be useless to remand this case to the Subordinate Judge for trial on the merits, inasmuch as the plaintiff's own case discloses no right of action; that his tenure, as stated by himself, did not amount to more than a right of occupancy, which he claimed to have purchased; and that by a ruling of a Full Bench of this Court, in the case of *Ojoodhya Pershad* v. *Mussamut Imam Bandi Begum,*† it has been held that a right of occupancy is not saleable; that, therefore, the plaintiff, claiming to have purchased such a right, had, in reality, no ground on which to bring this suit at all. On this we observe that the objection to the plaintiff's right to bring this suit was never raised at any stage of the proceedings; that the defendant pleaded to the plaintiff's case, as it was brought by him, and he never objected to the title he set up; and we think that, at this eleventh hour, it would be wrong to force the plaintiff to establish an altogether new case, or to make him prove what the defendant had never at any time asked him to prove. Moreover, the judgment of the Full Bench does not go to the length of saying that, under every state of circumstance, a right, occupancy, or a right in land, which has extended over 12 years, is not transferable; as a general rule, no doubt it lays down that, when a tenure was not transferable before the passing of Act X, the passing of that Act would not have the effect of rendering that tenure a transferable one, but it specifically exempted cases in which rights of occupancy, or tenures of a similar description, were transferable by local custom. In this case, for any thing that is before the Court, the plaintiff might have purchased this tenure, which he now seeks to recover under such a local custom, and it may very well be that the defendant's silence, and his pleading to the plaintiff's suit, without raising any such objection, was a *quasi* admission that there was some such custom under which the tenure might have been transferred. However it may be, it has never been ruled by any judgment of this Court, that under no circumstances can a right of occupancy be transferred; and, therefore, there is no sufficient ground for saying that, on the very face of the plaintiff's case, there was no right of action.

The case must be remanded to the Court of the Subordinate Judge, in order that he may try the case on the questions raised before the Munsiff, and pass a decision. Costs to follow the result.

MITTER, J.—I concur. I express no opinion as to whether such a suit as the present could have been instituted in the Collector's Court, but it is settled law that the Civil Courts have ample jurisdiction to entertain it.

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* Special Appeal, No. 160, of 1869, from a decree of the Subordinate Judge of Shahabad, dated the 26th November 1868, reversing a decree of the Munsiff of that district, dated the 23rd April 1868.

* Case No. 2,318 of 1862; August 21st, 1963.

† Case No. 2,609 of 1866; May 31st, 1867.

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BAYLEY AND MITTER, J. J.

Kali Kamal Mazumdar (defendant) *v.* Shib Suhai Sukul (plaintiff.)*

Breach of contract to plant Trees — Ejectment—Limitation—Act X of 1859, *Section* 30.

In 1857, *the plaintiff gave a lease of a garden to defendant, who agreed to plant, within five years from the date thereof,* 2,000 *betel-nut trees. The defendant failed to do so.*

In 1867, *the plaintiff brought the present suit for ejectment on account of the breach of the contract entered into by the defendant.*

HELD, *that by Section* 30, *Act X of* 1859, *the suit was debarred by limitation.*

Baboo *Kishen Dayal Roy* for appellant.

Baboos *Chandra Madhab Ghose* and *Kali Mohan Das* for respondent.

MITTER, J.—This was a suit for the cancelment of a lease, on the ground of an alleged breach of its conditions.

The breach referred to consists in the failure of defendant to plant 2,000 betel-nut trees within five years from the date of the lease. The lease was executed on the 9th Paush 1264 (1857), and the present suit was brought in 1274 B. S. (1867).

The only question we have to determine in this special appeal is, whether the claim of the plaintiff is barred by the Rule of Limitation, prescribed by Section 30, Act X of 1859. We are clearly of opinion that it is. There can be no doubt that the plaintiff's cause of action accrued when the breach he complains of actually took place, that is to say, on the 10th of Paush 1269 (1862), and the plaintiff was bound to sue within one year from that date, according to the provisions of the section above recited. This the plaintiff has failed to do.

It has been said that the plaintiff has got an annually-recurring cause of action, but there is nothing in the lease to support such a contention, and the pleader for the respondent has failed to show that there is any authority in support of it.

It was next urged that the plaintiff had already taken possession of the property in question in consequence of the breach above referred to, but that the defendant was restored to possession under a decree passed in a suit instituted by him according to the provisions of Clause 6, Section 23, Act X of 1859, and it was accordingly contended that the plaintiff's cause of action accrued when the defendant was thus restored to possession. This contention is manifestly wrong. The plaintiff cannot be permitted to plead his own wrong, in order to avoid the operation of the Law of Limitation. He had no right whatever to eject the defendant of his own authority, and the Court which decided the suit above referred to was fully justified in restoring the defendant to possession. It has been further urged that the plaintiff's cause of action is a *continuing* one; but if this were so, the provisions of Section 30, Act X of 1859, would become a nullity so far at least as suits of this description are concerned.

This special appeal is accordingly decreed, and the plaintiff's suit is dismissed with costs in all the Courts.

* Special Appeal, No. 3,230 of 1868, from a decree of the Judge of Tipperah, dated the 4th September 1868, reversing a decree of the Deputy Collector of that district, dated the 29th June 1868.

OFFICIAL PAPERS.

LANDING OF GOODS—NOTICE OF LIEN.

Proceedings of the Madras Government, Revenue Department, 14th December 1869.

Read the following papers :—

From the Chairman, Chamber of Commerce, to the Chief Secretary to Government, Fort Saint George, dated Madras, 21st September 1869.

The Chamber have had under consideration Act XVII of 1869, "to shorten the time for landing goods," and have observed that, by the amended Section 52 of the Consolidated Customs' Act, the procedure in respect of goods not landed within the time allowed, provides for the number of working days not exceeding fifteen, being, from time to time, appointed by the local Government by Notification in the *Official Gazette.*

2. After mature deliberation the Chamber have desired me to solicit the Government to authorize the Collector of Sea Customs to act upon a notice of a lien on goods immediately on arrival in the case of all steamers, and three days after they have commenced to discharge in the case of sailing vessels.

Forwarded to the Board of Revenue for their observations.

(Signed) R. A. DALYELL,
Acting Secretary to Govt.

FORT SAINT GEORGE,
24th September 1869.

Proceedings of the Board of Revenue, dated 22nd October 1869, No. 7,870.

Read the following letter from the Collector of Sea Customs, to the Acting Secretary to the Board of Revenue, dated Madras, 12th October 1869, No. 1,047.

Board's Proceedings, 11th instant.

2. I have the honour to state that I see no objection to the request of the Chamber of Commerce being complied with.

In this letter the Collector of Sea Customs reports that he sees no objection to the course proposed by the Chamber of Commerce, namely, that in fixing, under Act XVII of 1869, the period within which, if goods be not landed, they should be liable to detention at the Custom-house on notice of a lien for freight, &c., the local Government should declare that, in the case of steamers, goods must be landed *immediately,* and in the case of sailing vessels *within three days of their commencing to discharge cargo.*

2. The Board cannot concur in the recommendation of the Chamber of Commerce, and are of opinion that the just interests of the public demand that reasonable time should be allowed to consignees to clear goods at their own expense. The adoption of the periods specified would place in the hands of steamers' and ships' agents a power

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of landing without option allowed to the consignee, and furnish them with a summary mode of enforcing payment of whatever they might claim as remuneration.

3. The Board have reason to know that even under the present law great complaints are made of exorbitant demands on the part of steamer agents, who endeavour to secure a monopoly of the business of landing and to turn it to the best account.

4. The Board are clearly of opinion that in the case of steamers at out-ports, a period of not less than 12 hours' daylight should be allowed, and at Madras of 48 hours; and in the case of sailing vessels they would advocate a period of four days at out-ports, and eight days at Madras.

Proceedings of the Board of Revenue, dated 16th November 1869.

Read the following letter from the Collector of Sea Customs, to the Acting Secretary to the Board of Revenue, dated Madras, 2nd November 1869, No. 1,110.

With reference to paragraph 3 of the Proceedings of the Board of Revenue, dated 22nd October 1869, No. 7,870, I have the honour to inform you that all packages arriving by the steamers belonging to the companies noted in the margin, (the only ones whose steamers ply here regularly,) are landed by the several agents immediately on the arrival of their steamers, and delivered to consignees. This system appears to have worked satisfactorily in Madras, as no complaints were ever brought to me against it. I further beg to add that the English and French steamers remain in this roadstead at most twelve hours, and those of the B. I. S. N. Company two days. I, therefore, think that the opinion expressed in paragraph 4 of the Proceedings above noticed regarding the time to be allowed for steamers to land goods will be unsuitable to the requirements of the steam trade of this port.

P. and O. Company.
Messageries Imperiales Company.
B. I. S. N. Company.

Submitted to Government in continuation of Board's Proceedings of the 22nd October.

2. The Collector of Sea Customs thinks that the opinion expressed in paragraph 4 of those Proceedings, (viz., that forty-eight hours should be substituted for the period of fifteen days hitherto allowed for landing goods,) will be unsuitable to the requirements of the steam trade of this port.

3. He states that it has hitherto been the practice for agents, immediately on the arrival of the steamer, to land goods and deliver them to the consignee, and that the system has worked well and given rise to no complaints

4. In making their recommendation the Board did not anticipate that the alteration proposed would much affect the existing system in regard to the steam shipping trade. The course recommended by the Chamber of Commerce and supported by Mr. Blair involved substituting for fifteen days the term *immediately*, and appeared to the Board calculated to expose consignees to hardship by removing one of the safeguards against unreasonable charges on the part of steamer agents; moreover, it seemed opposed to the principle of the law, which was not intended to afford aid to ship-masters and agents until after the occurrence of a *laches* on the part of consignees.

5. The circumstances of the port of Madras are such that to enact that goods not landed *immediately* by the consignee should be liable to be landed at once by the steamer agents would be to deprive the former of any period whatever during which he should be able, by landing his own goods, to retain uncontrolled possession of them.

6. The wording of the amended Section 52 is, "within such number of working days *** as the "local Government shall appoint, etc.;" and it seems questionable whether this authorizes the appointment of a period less than a whole working day.

7. If the convenience of the steam companies necessitates that their agents should commence to land goods at once, the case is similar to that provided for in Section 53; and there is no hardship to them in not permitting them by their own act, done for their own convenience and without the consent of the other party to the contract, to establish thereby to their own advantage a lien on the goods which they would not otherwise possess.

8. Besides this it is open to them to introduce a specific stipulation in their bills of lading, fixing an earlier period under Section 54; and this course has the advantage of giving shippers and consignees due notice.

9. On a full consideration of the subject the Board see no reason to modify the views already expressed in their Proceedings of the 22nd October 1869.

ORDER THEREON, 14th December 1869, No. 3,167.

The Government have given the Board's Proceedings recorded above their most careful consideration, but they are not of opinion that any practical inconvenience to consignees is likely to result from the adoption of the proposal made by the Chamber of Commerce, supported as it is by the Collector of Sea Customs. The necessary notification will accordingly be issued.

(True Extract.)

(Signed) R. A. DALYELL,
Acting Secretary to Govt.

CINCHONA PLANT DISCOVERED BY MR. BROUGHTON.

Read the following Despatch from the Right Honourable the Secretary of State for India, (Public,) to His Excellency the Right Honourable the Governor in Council, Fort St. George, dated India Office, London, 26th September 1869, No. 29:—

I have received and considered in Council your Excellency's despatch, dated the 27th of July 1869, (No. 44,) forwarding Mr. Broughton's report on the discovery of a very valuable variety of the Cinchona plant, raised from seeds collected in the Loxa District, which yields a larger per-centage of quinine than any other kind that has hitherto been analyzed.

2. Mr. Broughton's very important discovery shows the great value of the services of an intelligent Chemist residing on the spot, with opportu-

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nities of watching the habit of the plants, the barks of which it is his duty to analyze. I perceive that your Government concurs in Mr. Broughton's opinion that a sufficient number of acres has now been planted with the *C. Succirubra*, and that the remaining area should be devoted to the careful cultivation of this precious Loxa species, and of the *C. Calisaya*, and varieties of *C. Pituyensis*, recently obtained from New Grenada. I presume, therefore, that immediate action will be taken in this matter, and there is no reason why the area to be planted should not be slightly increased beyond the extent already sanctioned, if such a course is found to be desirable.

3. It might be useful if specimens of the parts of Mr. Broughton's valuable Loxa variety were accessible in this country; and indeed it is desirable that a complete series of the different parts of all the Cinchona species grown on the Neilgherries should be preserved in this office. I have to request, therefore, that Mr. McIvor may be directed to dry specimens of the leaves, flowers, fruit, and bark of each species and variety of Cinchona, and that the collection may be forwarded to me.

ORDER THEREON, 9th November 1869, No. 2,936.

Ordered to be communicated to the Commissioner of the Neilgherries with reference to the Proceedings of Government, dated 19th June 1869, No. 1,740.

2. Referring to the suggestion made in paragraph 2 of the despatch, the Government have requested the Commissioner in their Order of this day's date, No. 2,935, to make a moderate provision in the Budget for 1870-71 for the extension of the plantations, in order to cultivate the new variety of the Cinchona tree discovered by Mr. Broughton.

3. Mr. Breeks will desire Mr. McIvor to make a complete collection of the leaves, flowers, and bark of each species and variety of Cinchona as requested in paragraph 3 of the despatch, and forward it to Government for transmission to the Secretary of State.

(True Extract.)

(Signed) R. A. DALYELL,
Acting Secretary to Govt.

Read the following Proceedings of the Government of India, Financial Department, (Expenditure, Income-tax,) dated Fort William, 26th November 1869, No. 2,785 :—

RESOLUTION.—In continuation of Resolution, No. 1,888, dated the 24th March 1869, the Governor-General in Council is pleased to prescribe the following rules with reference to Act XXIII of 1869, (to enhance the duties leviable under the Indian Income-tax Act.)

2. The proviso in Section 3 of the new Act is meant to meet the case of persons assessable under Part II of Act IX of 1869, the rate of whose chargeable income is higher during the last four months of the year than it was in the previous two months. For instance, if an officer of Government should return from furlough in Europe in the month of November or subsequently, his salary for November, December, January, and February, chargeable in the respective succeeding months would, under Section 2 of the new Act, be assessable at two-and-a-half per cent.; and this would, in his case, be the entire salary chargeable for the six months, commencing on the 1st day of October, if his furlough allowances were paid out of India. Hence, under Section 3, he would be entitled to a refund of the excess over two per cent. Similarly, an officer promoted to higher salary in November or subsequently would be entitled to a refund under that section.

3. It will be most convenient to make this refund by reducing the assessment in such cases on the salary payable in March 1870. The assessing officer will then be able to ascertain the entire salary chargeable during the six months commencing on the 1st day of October 1869, and the amount of duty at two per cent. thereon. He will thus be able to adjust any excess over that amount by a diminution of the assessment in March, or, if necessary, by a re-payment.

4. The second clause of Section 2 is meant to provide for cases in which the assessments are made in December, before the assessing officer was informed of the provisions of the new Act.

5. The same remarks apply to annuities and pensions assessable under Part II.

6. The Collector should at once bring to the notice of the proper officer of every Company assessable under Part III that such Company is liable to a further duty equal to half the amount to which it was liable under that part, and that this further duty is payable on the 1st December 1869.

7. Wherever a notice has been already served under Part IV, Section 16, the Collector will, under Section 6 of the new Act, serve a supplementary notice in the following form :—

Supplementary Notice under Section 6,
Act XXIII of 1869.

No.

To

Date.

Whereas you were served with a notice under Section 16 of the Indian Income-tax Act requiring you to pay Rs. , you are hereby required to take notice that, under Section 5 of Act XXIII of 1869, you are liable to a further duty of Rs. , payable within fifteen days of the service of the present notice. A receipt will be granted at *(place)* on *(time)* by *(name of officer)* to whom payment should be made.

(Collector's Signature.)

8. If a notice has not been already served on any person liable under Part IV of the Indian Income-tax Act, the form of notice prescribed in the Resolution of the 24th March last will be used, care being taken to enter the enhanced amount in the fifth column of that form.

9. The form of receipt prescribed in the above-quoted Resolution requires no alteration; but if in any case a receipt has already been granted, the term "supplementary receipt" should be used,

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10. A register of supplementary notices should be kept in the following form:—

Register of Supplementary Notices under Section 6 of Act XXIII of 1869.

Number of supplementary notice, with date of service.	Number of original notice.	Name of person assessed, with name of trustee or agent, if any.	Amount of additional duty.	Amount of fine under Section 25 of Act IX of 1869 in respect of additional duty.	Date of payment of additional duty or fine, with number of receipt.
1	2	3	4	5	6

Ordered that the above Resolution be published for general information in the *Gazette of India*, and communicated to the several Departments, Governments, and Administrations, and to the several Accountants-General, and Deputy-Accountants-General in independent charge, for information and guidance.

2. Also to the Comptroller-General of Accounts for information and guidance.

(Signed) R. B. CHAPMAN,
Offg. Secy. to the Govt. of India.

ORDER THEREON, 14th December 1869,
No. 3,174.

Communicated to the Board of Revenue in continuation of the Proceedings, dated 13th April 1869, No. 996, for their information and for immediate communication to all Collectors and the Commissioner of the Neilgherry Hills for their guidance.

(True Extract.)

(Signed) R. A. DALYELL,
Acting Secretary to Govt.

Read the following Proceedings of the Board of Revenue, dated 2nd December 1869:—

Read the following letter from the Collector of South Arcot, to the Acting Secretary to the Board of Revenue, dated Cuddalore, 20th November 1869, No. 277.

I have the honour to report, for the information of the Board and Government, that heavy rain has fallen very generally throughout this district during the last month, and the quantity gauged at my own office since the 25th October is noted below:—

Dates.	Inches	Tenths.
25th and 26th October ...	...	...
27th do. ..	1	...
28th do. ...	1	4¾
29th do. ...	..	3½
31st do. ...	6	5½
1st November ...	...	5½
2nd do. ...	...	7
3rd do. ...	1	7½
4th do. ...	4	5
5th do. ..	1	3
6th do. ...	1	7½
7th do. ...	2	4½
11th do. ...	...	3½
13th do. ...	...	6½
15th do. ...	2	4½
16th do. ...	4	...
17th and 18th do. ...	...	...
	29	8¼

2. Prior to this, all river-fed sources of irrigation had received a full supply for the season, and my only fear has been that tanks and reservoirs would have burst their banks; but happily as yet nothing of the kind, to any material extent, has been reported, owing to timely precautions to let off all surplus water. Rain-fed tanks very generally throughout the district have also received a full supply, and the season altogether promises to be one of the most propitious we have had for a series of years for both wet and dry cultivation.

3. It will be seen that the rainfall in less than a month has nearly equalled the average amount in past years, and, if we only have a renewal of showers in the beginning of January, I am sanguine that there will be a very large increase of revenue in the current Fusly year, and that remissions will be almost unknown.

4. This sudden propitious change in the prospects of the coming season throughout this part of the country cannot be over-estimated, and it is only a Revenue Officer perhaps who can fully enter into the relief and blessing attending such a change after the anxiety and distress occasioned by a succession of bad seasons; and I have thought the altered position of the year's prospects were a fitting subject for a special report, for if, as I believe, these prospects are much the same throughout the Presidency, the Board and Government will not fail to share in those feelings of gratitude and thankfulness, which every head of a province must experience on witnessing his district suddenly turned from a desert into a garden, and promised abundance and plenty where only shortly before all looked gloomy and threatening.

5. Although the past few months or since April have been somewhat anxious to me, yet it is gratifying to find that all my calculations and anticipations, recorded in my letter to the Board of the 13th February last, No. 43, (*vide* Board's

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Proceedings, No. 1,596, of 9th March,) have proved correct and been fully realized. The retail prices of all grains have averaged throughout from 30 to 35 per cent. cheaper than in Fusly 1276-77, and there has been neither suffering nor distress in any part of the district calling for special measures of relief, so that my expectations as to the real condition of the people, and my knowledge of the resources of the district available to meet any pressure, as given in paragraphs 10, 11, and 12 of that letter, have all been borne out—a result which has been very satisfactory, however great my anxiety and watchful oversight may have been in the intervening period as the season of drought progressed.

Submitted for the information of Government.

ORDER THEREON 14th December 1869, No. 3,173.

Ordered to be recorded.

(True Extract.)

(Signed) H. WELLESLEY,

Acting Under-Secretary to Government.

PLAN OF NEW JAIL FOR PALAMCOTTAH.

Proceedings of the Madras Government, Judicial Department, 15th December 1869.

Read the following papers:—

From Lieut.-Colonel W. J. WILSON, Inspector-General of Jails, to the Secretary to Government, Public Works Department, Fort Saint George, dated Ootacamund, 5th August 1869, No. 92.

I have the honour to forward plans and estimates for a new District Jail at Palamcottah, in the District of Tinnevelly. Accommodation exclusive of that in hospital has been provided for the undermentioned classes, viz.:—

Male convicts	120
„ under-trial	18
Boys	6
Female convicts	16
„ under-trial	4
Male debtors	12
Female „	4
Total...	180

Three solitary cells.

Two cells for condemned prisoners.

2. As the number of male prisoners under trial has on several occasions exceeded thirty, and the number of boys has not been more than three, I propose that the under-trial block should consist of four wards, viz., three wards of under-trial prisoners, two to contain twelve each, and one to contain nine; the fourth ward to be for four boys. I would exclude the cells for condemned prisoners from the body of the jail and add them to the block of solitary cells beyond the circle. With these modifications the provision for the various classes of prisoners will correspond with their average number during the last four or five years with the exception of that for female debtors, none of which classes appear to have been received into jail at Tinnevelly for several years past.

3. The undermentioned alterations in the construction of the different buildings appear desirable:—

I. The dimensions of the wards ought to be modified so as to allow 40 superficial and 600 cubic feet per prisoner, instead of 37 superficial and 660 cubic feet as provided.

II. The window sills in the wards appear to come within two feet of the floor. I would allow 2½ feet.

III. The doors ought to open on hinges at one side. Iron doors revolving on the centre are not required.

IV. The shutters to protect the windows should be placed outside.

V. If not objectionable on account of the extra expense, I think it would be preferable to exclude the night conveniences from the wards. A recess about eight feet high and six feet square, with a grated aperture on each side for ventilation, might be built between any two windows at the back of each ward.

VI. Eave ventilation ought to be given in every block.

VII. WOMEN.—A separate workshop is not required for the women. If a verandah about nine feet broad with a parapet wall in front three feet high is added to the front of the block, it will answer the purpose. The accommodation as per plan is a single block consisting of a large central ward for convicted females, and a small ward at each end, one for under-trial females and the other for debtors, the latter being divided from the other part of the building by palisading. The daily average number of under-trial females has been about two, and there have been no female debtors at all of late years; but I have not proposed any modification in the plan of this building with the exception of the addition of a verandah and of such alteration in the dimensions as will give the standard allowance of space, because the ward designed for female debtors will be found useful when separation may be required, and for the temporary accommodation of long-sentenced women while their time for appeal is pending. A separate building may be erected for the under-trial women, but their number is so small that this scarcely appears necessary.

VIII. HOSPITAL.—The building shown in the plan provides for the reception, under the same roof, of males and females, and of persons suffering from contagious diseases. I recommend that a hospital for women should be built in their own compartment, and that a separate building for persons attacked by contagious diseases should be erected near the hospital. Each hospital ought to have a verandah all round.

IX. SOLITARY CELLS AND CELLS FOR PRISONERS CONDEMNED TO DEATH.—The dimensions of these should be increased so as to give 100 superficial and 1,000 cubic feet per cell. The doors of the cells for condemned prisoners ought to be of open iron grating, so that the inmates may be kept under observation. Those of the solitary cells should be of wood of a similar pattern to those at the Vellore Central Jail.

X. LATRINE FOR MALES.—That shown in the plan measures 81 × 44 feet, and is of the same description as those sanctioned for Central Jails. I enclose a rough plan of a latrine of a more simple description measuring 60 × 31½ feet, which will be less expensive and equally convenient.

XI. LATRINE FOR FEMALES.—That shown in the plan measures 25 × 18 feet. I enclose a rough

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plan of a smaller building measuring 16 × 10 feet inside, which is quite large enough. One of a similar size may be built in the hospital compartment. The trough in the latrine at the Native Jail at Ootacamund is sunk below the surface of the ground, and, as it has answered the purpose remarkably well for the two years during which it has been used, and as troughs of this description are probably cheaper and more easily constructed than those raised above the ground, I recommend them for adoption at Tinnevelly.

XII. A request was recently made by a European Head Constable to the effect that the two rooms might open into each other in order to improve the ventilation. If an arch can be turned in the dividing wall it will answer the purpose.

XIII. No basement ought to be less than two feet.

4. The undermentioned additional buildings seem to be required:—

I. Quarantine Block.—The average number of male convicts and under-trial prisoners admitted during 1868-69 averaged respectively thirty-four and seventeen per mensem, but the number varied considerably in different months: for example, the smallest number of convicts admitted during any one month was fifteen and the greatest seventy-six, the smallest number of under-trial prisoners was three and the greatest thirty-nine. I have consequently found some difficulty in determining what amount of quarantine accommodation ought to be provided. The block now proposed consists of four wards of the same dimensions as those of the new Subsidiary Jails—three wards each to contain six persons, and one ward to contain three persons.

II. Separate hospital for women.

III. Separate hospital for persons afflicted with contagious diseases.

5. I herewith submit a block plan on the same scale as that prepared by Colonel Wilkieson, showing the additional buildings, and also altering the positions of the hospitals, of the wards for females, of the latrines, of the solitary cells, of the dead-house, and of the debtors' ward. The hospital and barrack for women, if built as shown in the original plan, will be too near the main wall, and I, therefore, propose to take in additional ground to the extent of 150 feet and to erect the buildings for the sick and for the women thereon. The quarantine wards and general latrine ought to be as far removed from the other buildings as possible, and I have shown them in opposite corners of that end of the enclosure next to the entrance. The debtors' ward and the block of cells have been placed as far from the other buildings as the space will admit of. The former might be moved nearer the hospital, but that would interfere with the power of extending the convict barrack marked A., which power it is desirable to retain. As the erection of the quarantine and debtors' wards beyond the outer wall of the jail would involve additional expenditure, I have proposed to place these buildings inside. Three bathing cisterns will be required—one for the general body of prisoners, measuring 18 or 20 × 8 × 2½ feet inside; one for the hospital, and another for the women, each measuring 8 × 4 × 2½ feet inside.

6. The site selected is about one-and-a-half miles from the old jail in the cantonment of Palamcottah. It stands high. The soil is red laterite, and good water is procurable. The north-east wind prevails from the latter part of November until the end of March. Early in June the south-west monsoon sets in, but, the direction of the wind being affected by the range of ghauts, is generally due west at Palamcottah until October. In April, May, October, and the early part of November, the wind is variable. I have, therefore, shown the hospital in the south-western corner of the enclosure.

7. I also forward a letter from the Officiating Superintending Engineer requesting permission to commence the preparation of materials for the enclosure wall and other buildings.

8. A gang of 150 convicts to strengthen the working party is under orders to leave Madura so soon as the huts are ready.

Referred to the Judicial Department.

(Signed) C. A. ORR, Colonel, R. E.,
Secretary to Government, P. W. D.

Fort Saint George,
29th August 1869.

Referred to the Acting Sanitary Commissioner for his remarks, which he is required to submit at an early date.

(Signed) H. E. STOKES,
Acting Under-Secretary to Government.

Fort Saint George,
23rd August 1869.

From Captain H. Tulloch, R. E., Officiating Sanitary Commissioner for Madras, to the Chief Secretary to Government, Fort Saint George, dated Madras, 11th September 1869, No. 3018.

In reply to your Acting Under-Secretary's docket on letter, No. 92, of the 5th ultimo, addressed by the Inspector-General of Jails to the Secretary to Government, Department of Public Works, concerning the proposed District Jail at Palamcottah, I have the honour to submit the following observations.

2. I do not propose to enter into the question as to the number of the various classes of prisoners for whom accommodation should be provided, because the Inspector-General of Jails is obviously the most competent officer to settle that point. My remarks will be confined to the buildings, and to the nature of the accommodation which they would afford. I will consider the alterations proposed by the Inspector-General in the order in which he has placed them.

The superficial area for each prisoner should be 40 feet, and the cubical space 650 feet.

The window sills may be raised half a foot from the floor as proposed by Colonel Wilson.

Considered from a sanitary point of view, it does not much matter whether the door works on a pivot in the middle or on hinges at the side. The latter arrangement, because it is the ordinary one, is the more convenient.

I agree with Colonel Wilson that the shutters to protect the windows should be on the outside.

There are grave objections to the night "conveniences" being placed in the wards. The ordure must contaminate the atmosphere in which the prisoners are sleeping, and pre-dispose them to

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sickness. It is not quite clear to me what kind of recess the Inspector-General of Jails proposes. All that is required is a small compartment cut off from the ward, but to which access could be had through a door. The room ought to be thoroughly ventilated, so that the gases from the urine and night soil might escape at once to the atmosphere outside the building.

All the terraced buildings should have apertures for ventilation at the top of the walls, but these will not be required in those buildings which have pent roofs and ridge ventilators.

The hospital for females must be a separate building from that in which males are treated, and the contagious wards in connexion with each must be isolated. Although verandahs may be dispensed with in most of the other buildings, they are indispensable in the hospitals. The shade which they afford is most grateful to convalescent patients, and, indeed, to all who are not compelled to stay in doors.

Prisoners who are undergoing solitary confinement or condemned to death, and who are, therefore, obliged to be kept to themselves, should each have the superficial area and the cubical space allotted to them which is proposed by the Inspector-General of Jails.

I prefer Colonel Wilson's design for the latrines, but it will be necessary to add a ridge ventilator right along the whole length of each building. It is immaterial whether the trough is placed below or above the level of the ground. I am opposed to the men's and women's latrines being joined together. They should be separate buildings.

I perfectly agree with the Inspector-General of Jails, who recommends that no basement ought to be less than two feet from the ground. The health of men is so much affected by damp, that we cannot be too careful in trying to keep all buildings dry.

3. The extra buildings which are not provided for by the Public Works Department, but which are recommended by the Inspector-General of Jails, are quarantine wards, separate hospital for women, and separate hospital for contagious diseases. It will be seen that in paragraph 2 of this letter I have already urged that the two latter buildings be provided. The necessity for quarantine wards need not be pointed out by me, as the attention of the Government of India has already been drawn to this subject.

4. The Inspector-General of Jails has recommended three wards, each to hold six persons, and one ward to hold three persons. Thus accommodation would be secured for twenty-one persons altogether. But the Government of India seem to have approved of the suggestions of their Sanitary Commissioner, who is opposed to prisoners on first joining a jail being placed together. It is stated in the remarks of the Government of India, (*vide* Proceedings of the Madras Government, Judicial Department, No. 1325, of [illegible]th August 1869,) "instead of fresh arrivals being put in barracks calculated to hold six or eight persons, it would be far better to put each individual into a separate cell, so far as such a disposition may be practicable without serious expense." From the general tenor of their remarks, moreover, it is clear that it is not contemplated that so many as twenty-one solitary cells should be built in a single jail, such as the one now under consideration, in addition to those required for purposes of punishment. Nor, on the other hand, are the principles laid down for guidance sufficiently precise to enable me to fix on the exact number of cells that should be erected. I would recommend a dozen quarantine cells as a preliminary necessity. If afterwards more should be required, they can be constructed.

5. Under these circumstances it will, of course, be necessary at the same time to make use of, to the utmost, every building in the jail that can conveniently be used for segregating prisoners on their first arrival at the jail; otherwise it will be impossible to accommodate the required number.

6. It occurs to me that a great deal of expense may be saved by not admitting into jail more prisoners at a time than there is quarantine accommodation for. Before prisoners are sent from one station to another, the Superintendent of the Jail to which they are to proceed should be communicated with, and it should be ascertained from him whether he can receive them or not. No doubt, if proper arrangements are made by the officers concerned, the necessity for a large number of separate quarantine cells may, to some extent, be obviated.

7. Regarding the general arrangement and positions of the different buildings in the proposed jail, I would adopt the plan proposed by the Inspector-General of Prisons, but with certain modifications.

8. There is no reason why the solitary and condemned cells block, the latrines, the quarantine wards, and the hospitals should not also all radiate towards the centre of the jail. Letting alone the advantages of easier circumspection that would be secured by this arrangement, it would be beneficial from a sanitary point of view. The buildings in this position would interfere less with the perflation of the air towards the main wards than if placed as proposed in the plan.

9. I observe that the contagious diseases' wards attached to the male hospital have been placed due west of the female hospital, and it is stated on the plan that west winds prevail from June till October. It is most necessary that these wards should be so situated that no prevailing winds should blow over them towards any building in the jail. Obviously the proper place for them is the south-east corner of the square. By placing the male hospital to the east and the female hospital to the west, the contagious diseases' ward will be situated to the west of all the other buildings, and they need not be removed far from the male hospital, of which they will still form an integral part.

10. In a previous part of this letter I assumed that the quarantine wards were to be within the jail walls; but there can be no question about the advisability of putting them outside if there are no insuperable objections, other than sanitary, to this being done. A little additional expense should not be considered when the health of all the convicts depends so much on the prevention of diseases being imported from other stations.

11. It is of great importance that all the water used for bathing, washing, and cooking purposes should be conveyed away from the precinct of the dwelling as rapidly as possible, and I would strongly advocate its being used on ground which might conveniently be converted into a kind of kitchen garden to supply the prisoners with vege-

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tables. On the same land might be used, with great profit, all the earth that had been converted into poudrette within the jail walls. I am decidedly opposed to the burial of excreta, however deep the pits may be dug. The conversion of excrement into food seems to me at once the most scientific mode of dealing with this question, and the one most likely to produce the best sanitary results. Excrement buried is merely an evil put out of sight, but not the less likely on that account to do mischief. But excrement turned into food is foul matter robbed of all its power to do harm.

12. The surface drainage should not be intercepted any where near the jail, but should be allowed to flow right away to the natural outfalls in the neighbourhood.

13. I quite agree with both the Superintending Engineer and the Magistrate that the jail should be clear of all nuisances and encroachments, and I strongly advocate that the eighty-two acres of ground proposed to be taken up be purchased outright. The jail will then stand with an open space around it, and not be liable to contamination from without.

14. The points not referred to by the Inspector-General of Jails, but which will require attention, are as follow :—

JAILOR'S QUARTERS.—Ridge ventilation should be put up over the quarters, the godown, and the privy.

QUARTERS FOR POLICE GUARDS.—A window is required in the front wall of each room, and a ridge ventilator right along the entire roof. The cross walls separating the quarters from each other should be reduced to 3½ feet in height, otherwise they will interfere with the perflation of the air.

QUARTERS FOR THE EUROPEAN HEAD CONSTABLE.—A ridge ventilator is required to the quarters, the cook-room, and the godown. The two rooms should communicate with each other through a door or an open archway. The floor should be two feet from the ground.

DRESSER'S QUARTERS.—Ridge ventilator is required: a window in each side wall of the main room would be a great advantage, and a window in the side wall of each of the other rooms would make them also much healthier. Floor should be two feet from the ground.

DEPUTY JAILOR'S QUARTERS.—Ridge ventilation is required to the quarters and the out-office. The floors should be two feet from the ground.

WARDERS' HUTS.—Some kind of ventilation in the roof will be required unless pan-tiles only are used, in which case the ventilation may be dispensed with. The cross walls separating the huts are much too high. The floors should be raised to two feet above the ground, and application of poudrette and sewage to cultivation.

15. In conclusion, I beg to add that much saving of time would be effected if, before detailed plans and estimates for large buildings were prepared, a pencil outline of the proposed works were, in the first instance, forwarded for remarks. All the preliminary points could then be settled before the Engineer proceeded to details, which, under these circumstances, would not probably require any alteration.

ORDER THEREON, 15th December 1869, No. 1984.

The estimate for the proposed new District Jail at Palamcottah, in the District of Tinnevelly, for the accommodation of 180 prisoners, amounts to Rupees 92,000, and provides for the buildings, &c., described below :—

	RS.	A.	P.
Enclosure Wall	18,200	0	0
Store and Office	2,730	0	0
Six Wards	18,490	0	0
Three Solitary Cells	1,100	0	0
Work-shed for Males ...	2,670	0	0
Do. for Females ...	475	0	0
Granary	1,760	0	0
Cooking-shed	1,580	0	0
Do. for the Hospital...	640	0	0
Cooking-shed for Females...	470	0	0
Latrine for Males	4,380	0	0
Do. for Females	690	0	0
Hospital	4,880	0	0
Do. Latrine	340	0	0
Leper Cell	900	0	0
Palisading	5,765	0	0
Three Wells	707	0	0
Women's Lavatory with seven walls	195	0	0
Dead House	335	0	0
Entrance Gate	330	0	0
Guard Room and Office ..	1,480	0	0
Jailor's Quarters	3,370	0	0
Cooking-shed for do. ...	555	0	0
Privy for do.	205	0	0
Deputy Jailor's Quarters...	630	0	0
Quarters for European or East Indian Head Constable	965	0	0
Cook Room for do.	290	0	0
Five Warders' Huts ...	1,485	0	0
Two Head and eight Deputy Constables' Huts ...	3,225	0	0
Latrines for do.	50	0	0
Cooking-shed for Jailors' Quarters	160	0	0
Dresser's Quarters... ...	980	0	0
Drainage	400	0	0
Extra Establishment ...	2,410	8	11
Scaffolding, and Sundries...	3,497	7	1
Pay of Police Guard ...	3,600	0	0
Value of land	2,060	0	0
	11,968	0	0
	92,000	0	0
Deduct value of convict labour...	10,000	0	0
Total...	82,000	0	0

2. The Inspector-General of Jails suggests that in the construction of the several buildings the following alterations should be made, viz. :—

I. The dimensions of the wards to be modified so as to allow 40 superficial and 600 cubic feet per prisoner.

II. The sills of the windows in the wards to be placed two-and-a-half feet above the floor.

III. The doors to open on hinges at one side.

IV. The window shutters to be fixed outside.

V. A recess about eight feet in height and six feet square, with a grated aperture on each side, to be built at the back of each ward.

VI. Eave ventilation to be provided in every block.

VII. A separate workshop for females to be dispensed with.

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VIII. But a verandah about nine feet broad with a parapet wall, three feet high, to be added to the front of the female ward, and the dimensions of the ward to be altered, so as to allow of the standard superficial and cubic space of 40 and 600 feet respectively.

IX. Each hospital to be provided with a verandah all round.

X. The dimensions of the solitary cells and cells for prisoners condemned to death to be increased so as to give 100 superficial and 1,000 cubic feet per cell.

XI. The doors of the cells for condemned prisoners to be of open iron grating.

XII. The latrine for males to be built in accordance with the rough plan submitted.

XIII. The latrine for females to be also according to the rough plan.

XIV. A similar latrine to be built in the hospital compartment.

XV. The troughs in the latrines to be sunk below the surface of the ground, as in the Native Jail at Ootacamund.

XVI. An arch to be turned in the partition wall between the rooms in the Head Constable's quarters.

XVII. All basements to be not less than two feet.

3. The Inspector-General also considers the following additional buildings to be necessary, viz.:—

I. Four quarantine wards of the dimensions of the new Subsidiary Jails.

II. Separate hospital for women.

III. Separate hospital for persons afflicted with contagious diseases.

IV. Three bathing cisterns—one 18 or $20 \times 8 \times 2\frac{1}{2}$, and two $8 \times 4 \times 2\frac{1}{2}$, and he submits a block plan showing the additional buildings and the alterations proposed in the positions of the hospital, wards for female, latrines, solitary cells, dead-house, and debtors' ward.

4. As the hospital and ward for women will, if built as shown on the original block plan, be too near the main wall, the Inspector-General proposes to take in 150 feet of additional ground, and to erect the buildings for the sick, and for the women thereon. He also proposes, with a view to avoid additional expenditure, to place the debtors' wards inside of the main wall.

5. The Officiating Sanitary Commissioner, Captain Tulloch, agrees with the Inspector-General in the alterations and additions which he has proposed. He would, however, with reference to the remarks of the Sanitary Commissioner with the Government of India, recommend that a dozen quarantine cells be erected, instead of the four wards proposed by the Inspector-General.

6. Captain Tulloch thinks that a great deal of expense may be saved by not admitting into a jail more prisoners at a time than there is quarantine accommodation for, and he suggests that before prisoners are sent from one jail to another it should be ascertained from the Superintendent of the Jail to which they are to proceed, whether he could receive them or not.

7. Captain Tulloch would adopt the block plan submitted by the Inspector-General of Jails with certain modifications, viz., that the solitary and condemned cells, blocks, the latrines, the quarantine wards, and the hospital should all radiate towards the centre of the jail; that the contagious diseases' wards should be placed in south-east corner of the square, the male hospital being placed to the east, and the female hospital to the west; and that the quarantine wards should be placed outside of the jail enclosure.

8. Captain Tulloch further suggests that the surface-drainage should not be intercepted anywhere near the jail, but be allowed to run to the natural outfalls;

That ridge ventilation should be provided for the Jailor's quarters, the godown, and privy;

That a window should be inserted in the front wall of each room of the Police guards, and a ridge ventilator provided along the entire roof. The cross walls separating the quarters from each other to be reduced to 3½ feet in height;

That ridge ventilation be provided to the quarters of the European Head Constable; Dresser, and Deputy Jailor;

That some kind of ventilation will be required in the Warders' huts if pan-tiles are not used;

That the cross walls separating the huts should be reduced in height;

And that poudrette and sewage should be applied to cultivation.

9. The Governor in Council approves generally of the suggestions made by the Inspector-General of Jails and the Officiating Sanitary Commissioner, and directs that the necessary instructions be issued in the Public Works Department.

10. The Governor in Council further directs that the recess for night use suggested by the Inspector-General of Jails be on the plan adopted in the Central Jail at Bangalore, which was approved of for all Central and District Jails in this Presidency in G. O., dated the 1st September last, No. 1,445; that a separate ward be provided for women under trial; and that the quarantine wards be constructed *outside* of the jail enclosure.

11. The Governor in Council does not see the necessity of having separate quarantine cells, as suggested by the Officiating Sanitary Commissioner. The quarantine building is merely to keep prisoners under inspection. As soon as there is any sign of sickness they would be removed to the hospital.

12. Paragraph 6 of the Officiating Sanitary Commissioner's letter will be referred to the Inspector-General of Jails for his remarks, and paragraph 15 for consideration in the Public Works Department.

(True Extract.)

(Signed) R. A. DALYELL,

Acting Secretary to Govt.

CIRCULAR ORDER OF CALCUTTA HIGH COURT ON ACT XX OF 1866, OR THE NEW REGISTRATION ACT.

To all Civil Judges, dated Calcutta, the 19th June 1866.

No. 5,	dated	31st March 1865.
„ 13	„	26th June „
„ 21	„	5th Sept. „
„ 33	„	22nd Dec. „
„ 2	„	2nd Feb. 66.

In supercession of their circulars as per margin, the Court are pleased to issue the following instructions regarding the new Registration Act (XX of 1866), to which they request the immediate attention of all Civil Judges of whatsoever grade:—

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2. Sections 41, 42, and 43, which prescribe the duties of Civil Courts in certain cases decided by them, are quoted below for easy reference. The difference between their provisions and those of Sections 43 and 45, Act XVI of 1864, should be carefully noted, so that no mistakes may occur in giving effect to the present law.

Section 41.—When any Civil Court shall, by a decree or order, declare any document relating to immoveable property which shall have been registered under this Act to be invalid, or when any Civil Court shall pass a decree or order affecting any such document, and such last-mentioned decree or order shall create, declare, transfer, limit, or extinguish any right, title, or interest under such document to or in the immoveable property to which it relates, such Court shall cause a Memorandum of the decree or order to be sent to the Registrar within whose district the document was originally registered.

Section 42.—When any Civil Court shall, by a decree or order, create, declare, transfer, limit, or extinguish any right, title, or interest of any person to or in any immoveable property situate in any part of British India in which this Act shall operate, such Court shall cause a Memorandum of the said decree or order to be sent to the Registrar, or to every Registrar within whose district the whole or any part of such immoveable property is situate, and such Memorandum shall, so far as may be practicable, describe the property in manner required by Section 21.

Section 43.—The costs of and attending the registration under Sections 41 and 42 of any Memorandum of a decree or order shall be costs in the cause, and shall be paid by the Court to the Registrar or to such other person, and in such way as the local Government shall direct in that behalf.

3. The main difference between Section 41 of the present and Section 43 of the repealed law is, that it is now required that Memoranda of decrees or orders affecting registered documents shall be sent to the officer generally known as the *District Registrar*, that is, "the Registrar within whose district the document was originally registered:" whereas under the now repealed law such Memoranda used to be sent to the office in which the document was originally registered, which might be, and, in most cases, no doubt was, the office of a Sub-Registrar.

4. A somewhat similar difference will be found on comparing Section 42 of the present with Section 45 of the repealed law. The Memoranda of decree or orders affecting immoveable property should be sent, not as heretofore to both District and Deputy or Sub-Registrars, but only to the District Registrar, or to every District Registrar within whose district the whole or any part of such immoveable property is situate. It should be noted that a Memorandum sent under Section 42 should, as far as practicable, describe the property in the manner required by Section 21. The Court trust that they may receive no complaint of a non-observance of this provision of the law; for, unless the Memorandum contains a proper description of the property, the purposes for which it is required *are entirely defeated, and the Memorandum is useless.*

5. Whenever a judgment is recorded *in English*, the Memorandum to be sent to the office for registration should be invariably drawn up in that language; for it is evident that the *substance of decrees or orders* passed by a Judge, of the nature of those entered in such Memoranda, *can be best expressed in the language in which the original judgments were delivered.*

6. Subordinate Courts should keep a copy of every Memorandum sent to the District Registrar, and the High Court is pleased to direct that, in forwarding the records of appealed cases, all Courts of first instance, and all subordinate Courts of Appeal, shall attach to the judgment appealed against a copy of the Memorandum (or Memoranda) sent in for registration.

7. In connection with Section 43, which it will be observed is an entirely new provision of the law, the High Court desire to point out that the costs of registration should be entered in every decree or order registered under Sections 41 and 42. The costs to be charged in the decree or order should, in accordance with the schedule sanctioned by His Excellency the Governor-General in Council, be calculated in the following manner:—

"The costs to be paid on Memoranda sent by the Civil Courts under Section 41 should be estimated at Rupees 2 in each case.

"The costs to be paid on Memoranda of decrees sent by the Civil Courts under Section 42 should be estimated on the value of the property affected by the decree according to the scale given in Schedule A., *viz*:—

		Fee. R.	A.
	Where the value shall not exceed Rs. 25	0	4
Extract from the Schedule of Fees under the Indian Registration Act XX of 1866 sanctioned by Government.	Exceeding Rs. 25, but not exceeding Rs... 100	0	8
	„ 100 „ ... 500	1	0
	„ 500 „ ... 1,000	1	8
	„ 1,000 „ ... 4,000	2	0
	and for every further Rs. 4,000 or part thereof...	1	0

(NOTE.—Where Memoranda have to be sent to more than one District Registar's office, the costs calculated as above shall be forwarded by the Court to the office in the District in which the principal part of the property affected by the decree is situate, and Rupees 1 shall be forwarded to each of the other Offices to which Memoranda are sent.)

8. It will be observed that, for registering a Memorandum under Section 41, Rupees 2 only will be charged as costs in the decree or order, whereas for a Memorandum under Section 42 a calculation will be necessary under the scale quoted in the foregoing rule.

9. To illustrate the mode of dealing with a Memorandum under Section 42 of a decree in which the property is valued at Rs. 23,000 and is situated in Moorshedabad, Rajshaye, and Nuddea, the greater portion of the property being in the last-named district, the Court would point out that the charge for registration would be calculated in the following manner:—

	R.	A.
For the first 4,000	2	0
For four successive sums of 4,000 ...	4	0
For a broken portion	1	0
For registration in Moorshedabad and Rajshaye	2	0
Total...	9	0

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The greater portion of the property being situated in Nuddea, the full fee, viz., Rs. 7, would be credited to the Registration Fund of that district, the sum of Rs. 1 being credited to the funds of Moorshedabad and Rajshaye, to the Registrars of which districts Memoranda should also be sent.

10. Civil Courts should bear in mind such charges, and, at the time of the execution of any such decree or order, should be careful to see that the Government dues are deducted from the monies realized in execution before any payment is made to the judgment-creditor. The dues should be deposited in Court, and as the local Government has as yet issued no orders regarding the payment of such monies, they should be made over, without delay, to the District Registrar or Registrars as may be. The High Court take this opportunity of impressing on all Judges the necessity for guarding against any loss by fraud or embezzlement.

11. Forms for the preparation of Memoranda under Sections 41 and 42 are hereto annexed. They are the same as those now in use, which were prescribed by Circular No. 5, dated 31st March 1865, except that an additional column has been added to show the amount of costs entered in the decree or order, which will, on execution of the said decree or order, be realized and paid into the credit of the Registration Fund.

12. * * * * *

13. With the view of ensuring the performance of the duties connected with the preparation of these Memoranda, the High Court request that every Civil Court, in according its judgment and decree or order in a case requiring registration, will enter the words "and a copy of the Memorandum A (or B), as required by Section 41 (or Section 42) of Act XX of 1866, shall be forwarded to the office (or offices) of the Registrar (or Registrars) of."

14 The Quarterly Statements required by para 8, Circular No. 5, dated 31st March 1865, should be forwarded as heretofore.

15. The High Court trust that, under the supervision of District Judges, the duty of preparing and forwarding Memoranda to Registration Offices has been regularly and punctually performed by all the Civil Courts. If it has in any instance been neglected, such neglect should be at once reported to the High Court, and measures should be taken, without delay, to bring up any arrears.

16. The High Court also desire to remind all Civil Judges that the provisions of Sections 41, 42, 43, Act XX of 1866, will apply only to decrees and orders passed subsequently to the 1st May 1866, those of a prior date being governed by the provisions of Act XVI of 1864, and that its terms apply to original as well as to appealed suits in which the decree or order passed concerns a registered document relating to immoveable property, or creates, declares, transfers, limits, or extinguishes any right, title, or interest of any person to or in any immoveable property situate in any part of British India in which Act XX of 1866 shall operate.

17. With a view of ensuring uniformity of practice, the Court is pleased to issue the following rules regarding the preparation of Memoranda of Registration :—

A. In decrees of a Court of first instance, dismissing a plaintiff's claim to any right, title, or interest to or in any immoveable property, no Memorandum need be prepared.

B. In decrees of an Appellate Court affirming the decree of a Court of first instance dismissing *in toto* a plaintiff's claim to or in immoveable property, no Memorandum need be prepared.

C. In decrees of a court of first instance decreeing either wholly or in part a right, title, or interest in immoveable property claimed by the plaintiff, a Memorandum must be prepared as to the property decreed: if on appeal the decree be affirmed without alteration or modification, no Memorandum need be forwarded.

D. In decrees of an Appellate Court in which the decree of the lower Court is modified or reversed wholly or in part, a Memorandum as to the part so modified or reversed should be prepared and forwarded.

E. When a decree of a Court of first instance declares a registered document relating to immoveable property invalid, or when such Court passes a decree affecting such document, and such decree shall create, declare, transfer, limit, or extinguish any right, title, or interest under such document to or in the immoveable property to which it refers or to any part thereof, a Memorandum should be prepared.

F. When a decree of an Appellate Court simply affirms the order of a Court of first instance on points relating to a registered document of immoveable property, no Memorandum need be prepared; but if such decree modifies or in any way varies or reverses that of the lower Court, a Memorandum relating to the portion of it so modified, varied, or reversed should be prepared.

G. When a decree has been passed by a Court of Justice in a suit instituted under Section 230 of Act VIII of 1859 in favour of the applicant as plaintiff either wholly or in part, a Memorandum should be prepared of the property decreed; and if, on appeal, that decree be wholly or partially varied or reversed, a Memorandum showing such variation and reversal should be prepared; but if the decree of the first Court be affirmed, no Memorandum is necessary.

H. When a sale of immoveable property made in execution of a decree has been confirmed by the Court under Sections 256 and 257 of Act VIII of 1859, a Memorandum of sale and confirmation should be prepared; and if, on appeal, that sale should be reversed, a Memorandum of such order of reversal should be prepared by the Appellate Court.

I. When, under Act X of 1865, probate is granted or refused by a District Judge of a will containing words sufficient to pass immoveable property, a Memorandum should be prepared.

J. If, on review of a judgment, a Court should set aside, modify, or in any way interfere with the decree as originally passed, then, if a Memorandum of the original decree has been forwarded to the proper Registration Office, a Memorandum should also be forwarded notifying the extent of the modification or reversal made by the order passed in review.

K. No Memorandum need be prepared of orders passed by any Court under Act XXVII of 1860, nor those passed under Act XIX of 1841, nor those under Section 2 of Regulation I of 1798, and Sections 7 and 8, Regulation XVII of 1806, nor of Act XL of 1858, nor of those passed under Section 15 of Act XIV of 1859, nor under Sections 246 and

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269 of Act VIII of 1859, nor in short of any order passed with reference to immoveable property in any of the miscellaneous cases entered in the Monthly Statement No. 2 which have not been explicitly mentioned in these rules.

18. It only remains for the Court to notice other portions of the Registration Act which affect the duties of Civil Judges.

19. The instruments of which registration is compulsory are described in Section 17, in connection with which Section 49 should be read. This section declares that "no instrument required by Section 17 to be registered shall be received in evidence in any civil proceeding in any Court, or shall be acted on by any public servant as defined in the Indian Penal Code, or shall affect any property comprised therein, unless it shall have been registered in accordance with the provisions of this Act."

20. In Section 18 are mentioned the documents of which registration is not compulsory but optional. The privileges which attend the registration of the documents specified in Clauses 1, 2, and 3 of Section 18 are declared in Section 50, which enacts that such instruments duly registered "shall take effect, as regards the property comprised therein, against every unregistered instrument relating to the same property, whether such instrument be of the same nature as the unregistered instrument or not." Section 48 further enacts, with reference to "all instruments duly registered under Act XX of 1866 and relating to moveable or immoveable property," that they shall "take effect against any oral agreement or declaration relating to the same property."

21. The time from which a registered document operates is specified in Section 47. The period of six years from the time when the cause of suit arose, is the limitation fixed by Section 51 of Act XX of 1866, and also by Clause 16, Section 16 of Act XVI of 1859, for suits to recover money lent or interest, or for the breach of any contract when such engagement in writing has been duly registered under the Act.

22. The mode in which Civil Courts are to enforce obligations which have been *specially* registered under Section 52 is laid down in Sections 53, 54, and 55, to which the High Court request the careful attention of all Civil Judges. The Court content themselves with observing that, contrary to the provisions of Act XVI of 1864, the record of agreement made by the parties needs to be signed only by the Registering Officer and the obligor.

23. Section 84 is also an important provision of the law, but it applies exclusively to the Courts of District Judges. The High Court expect that all cases of this description will be taken up and decided soon after the presentation of the petition, as it is a matter of importance that there should be no delay in such cases.

24. The Judges will open a new head in the Monthly Statement No. 2 for "Petitions under Section 83 of Act XX of 1866 to establish a right to have a document registered," and another for petitions under Section 53 of the same Act to enforce agreements recorded on specially registered obligations.

FORM A.

Serial No. of registered instruments, with Page, No., and Volume of Register in which it has been entered.	Names of parties to and No. of the suit, and whether an original or appeal suit.	Description of the immoveable property referred to in the instrument.	Effect of the decree or order on the instrument.	Date on which decree or order was passed.	Name and official designation of officer by whom the decree or order was passed.	Fees for Registration.
No. 1 of 1865, 1st January, 1865, Register of Hoogly.	Ram Dass *versus* Hurro Chunder Dass. Original Suit No. 16 of 1865 (or Appeal No. 120 of 1865.)	10 beegahs of land, Mouzah Shahpore, or Pergunnah Selimabad, Zillah Hooghly, bounded on the north by, &c., &c.	Declares it to be invalid.	10th July 1865.	Mr. John Smith, Judge of Hooghly.	

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FORM B.

Names of parties to and No. of the suits, and whether an original or appeal suit.	Description of the immoveable property affected by the decree or order.	Effect of the decree or order on the said property.	Date on which decree or order was passed.	Name and official designation of officer by whom the decree or order was passed.	Fees for Registration.
Obhoy Churn Mitter *v.* Kalidass Mitter, Original Suit No. 9 of 1865, (or Appeal No. 200 of 1865.)	Zemindary A in the Zillah of Hooghly.	Declares the adoption of the plaintiff to have been invalid, and declares the succession of the defendant to the said property as the nearest heir of the late proprietor under the law.	15th May 1865.	Baboo Rampershand Mookerjea, Principal Sudr Ameen.	

Quarterly Statement.

FORM C.

Name and designation of Civil Judge.	Number of decrees and orders passed relating to immoveable property.	Number of Memorandum sentin accordance with Sections 41 and 42, Act XX of 1865, state separately.

NOTE.—This circular is re-printed from our impression of January 1867, as we understand that great difficulty and perplexity are being experienced in the Mofussil, especially in respect to Sections 41, 42, and 43 of the Act.—ED. *R. R.*

ACTS OF THE GOVERNMENT OF MADRAS.

The following Act of the Governor of Fort St. George in Council received the assent of His Excellency the Viceroy and Governor-General on the 8th December 1869, and is hereby promulgated for general information :—

MADRAS ACT No. VIII OF 1869.

An Act to prevent doubts as to the true intent and meaning of certain words used in the Title Deeds of Inams heretofore furnished to Inam-holders by the Inam Commissioner of the Madras Presidency, and to declare the true intent and meaning of Madras Acts IV of 1862 *and IV of* 1866.

Preamble.

Whereas, under the rules sanctioned by the local Government in the year 1859 and published in the *Fort Saint George Gazette* dated the 4th of October 1859, for the adjudication and settlement of Inam lands in the Madras Presidency, the Inam Commissioner of the said Presidency is required to furnish Inam-holders with Title Deeds in respect of their Inams, prepared according to certain forms prescribed by the said Government; and whereas the terms of the Title Deeds so prepared appear in many cases to convey a more extensive right than was intended to be given, or than could be legally given; and whereas it is apprehended that the terms of the Title Deeds may be so construed as to affect the rights and

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interests which other persons may have in lands from which the Inams are derived or drawn, in cases where the Inam-holders do not possess the proprietary right in the soil, but only the right of receiving the rent or tax payable to Government in respect of the Inam lands as transferees of the Government, and it is, therefore, expedient to remove all doubts as to the true intent and meaning of the words used in the said Title Deeds; and whereas the words "land" and "lands" are used in Madras Acts IV of 1862 and IV of 1866 in connection with Inams in a sense not applicable to Inams, and it is expedient to explain the true intent and meaning of such words in the said Acts; It is enacted as follows:—

Wording of Inam Title Deeds not to affect holders or occupiers of Inam land; and wording of Madras Acts IV of 1862 and IV of 1866 not to be held to confer on Inam-holder any right which he would not otherwise possess.

I.—Nothing contained in any Title Deed heretofore issued to any Inam-holder shall be deemed to define, limit, infringe, or destroy the rights of any description of holders or occupiers of the lands from which any Inam is derived or drawn, or to affect the interests of any person other than the Inam-holder named in the Title Deed; and nothing contained in Madras Act IV of 1862, or in Madras Act IV of 1866, shall be deemed to confer on any Inam-holder any right to land which he would not otherwise possess.

(By order.)

JOHN D. MAYNE,

Assistant Secretary to Government,

Legislative Department.

BILLS OF THE GOVERNMENT OF MADRAS.

The following Report of the Select Committee on the Bill "to provide for the collection of tolls and license fees on canals and other lines of navigation, for the management of ferries, and for the construction and improvement of lines of navigation within the Madras Presidency," together with the Bill, as amended by the Select Committee, is hereby promulgated for general information:—

To

THE HONOURABLE THE COUNCIL OF THE GOVERNOR OF FORT SAINT GEORGE FOR MAKING LAWS AND REGULATIONS.

We have carefully considered the Bill "to provide for the collection of tolls and license fees on canals and other lines of navigation, for the management of ferries, and for the construction and improvement of lines of navigation within the Madras Presidency," and now submit our report thereon, with the Bill itself as amended by us.

2. Section 4 has been re-cast, and a proviso has been added, so as to make it clear that the effect of payment of a license fee on any boat should be to exempt it from tolls on any line of navigation governed by the Act while the license was in force.

3. Section 17 of the original Bill has been omitted. It exempted from payment of tolls troops on the march, Military or Government stores, and Military and Police Officers on duty. The ferries, however, will either remain in the hands of Government or be farmed out. If the former course be adopted, Government can, and probably will, direct that no such tolls, shall be exacted. If the latter course, it would also be open to Government to insert a similar provision in the conditions of lease; or it might be found more profitable to Government to pay toll, and to reimburse themselves by exacting a higher rate of rent.

4. Sections 13, 18, 24, 29, and 30 have received verbal corrections, which require no special notice.

MADRAS, 6th January 1870.

R. S. ELLIS.
V. RAMIENGAR.
W. R. ARBUTHNOT.

No. 8 of 1869.

A BILL

To provide for the collection of tolls and license fees on canals and other lines of navigation, for the management of ferries, and for the construction and improvement of lines of navigation within the Madras Presidency.

(As amended by the Select Committee.)

Preamble.

Whereas it is expedient to provide for the collection of tolls and license fees on canals, lines of navigation and ferries, and to provide for the management of ferries and the construction and improvement of lines of navigation in the Madras Presidency; It is enacted as follows:—

Interpretation.

1. The following words shall have the several meanings hereby assigned to them, unless where a contrary intention shall appear from the context, that is to say—

"Vessel."

The word "vessel" shall include any ship, barge, boat, raft, timber, bamboos, or floating materials, propelled in any manner.

"Line of navigation."

The words "line of navigation" shall mean any navigable channel subject to the provisions of this Act.

"Channel."

The word "channel" shall include any rive, canal, or waterway, whether natural or artificial.

What navigable channels may be rendered subject to the provisions of this Act.

2. It shall be lawful for the Madras Government, from time to time, by Notification to that effect published in the *Fort Saint George Gazette* and in the Gazette of the district to which the Notification shall apply, to declare that the provisions of this Act shall apply to any navigable channel specified in such Notification; and, from and after such publication, the provisions of this

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Act shall apply to, and be in force as regards, such navigable channel.

By whom navigable channels may be made.

3. It shall be lawful for the Madras Government, from time to time, to authorize any person to make and open any navigable channel, or to clear and deepen any navigable channel, and to stop any water-course, or make any tracking path, or do any other act necessary for the making or improvement of any such channel; and any navigable channel made under this section shall be rendered subject to the provisions of this Act in the manner prescribed in the last preceding section. The said Government may take possession, as for a public purpose, of any land that may be necessary for the execution of any of the abovementioned works, under the provisions of Act VI of 1857 *(An Act for the acquistion of land for public purposes)* or of any other Act that may now or hereafter be in force for the taking possession of land for public purposes.

Mode of obtaining land for the purpose.

Tolls to be paid on lines of navigation subject to this Act.

4. All vessels entering upon, or passing along any of the lines of navigation subject to the provisions of this Act, shall pay tolls or annual license fees, at such rates as shall be fixed in manner hereinafter mentioned. *Payment of the license fee shall exempt the vessel so licensed from all tolls payable under this Act upon any line of navigation during the period for which such license is in force.*

The Government may fix and alter rates of toll.

5. The Madras Government may fix, and, from time to time, alter, the rates at which such tolls or license fees shall be levied. Provided that no toll or fee shall be levied, and no alteration of any rate of toll or fee shall have effect, until notice shall have been published in the *Fort Saint George Gazette* and the Gazette of the district to which such notice applies, for such period as the said Government may fix, of the intention to levy or alter such toll, or to impose or vary such fee, and of the rate and place at which such toll or fee is to be levied or made payable.

Notification of rate of toll to be exhibited at every Toll-house.

6. Notification of the rates of toll and license fee, and of the places of collection, in English and in the vernacular language of the district, shall be at all times exhibited to public view at every Toll-house where toll is levied under this Act.

Government may appoint persons to collect tolls, and the collection of tolls may be farmed.

7. The Madras Government shall appoint such persons as it may think fit to collect tolls or license fees under this Act, or may lease out the collection of tolls and license fees to any other person. The lessee, or his duly authorized agent, shall be empowered to collect the tolls or fees in the like manner as any person appointed as aforesaid.

Payment of tolls how to be enforced.

8. If any toll or license fee due under the provisions of this Act in respect of any vessel shall not be paid on demand to the person authorized to collect the same, it shall be lawful for such person to seize such vessel and any furniture thereof, and to detain the same; and such person shall, within twenty-four hours of such seizure and detention, report the same to the nearest Collector or Deputy Collector of the district in which the seizure has been made, or other public officer duly authorized by Government in that behalf; and, on receipt of this report, the Collector, Deputy Collector, or other officer as aforesaid shall publish a notice appointing a day for the sale of the said vessel and any furniture thereof. The sale shall be held at some period not less than fifteen days from the date of the publication of notice of sale; and, if the toll or fee and also any expenses occasioned by non-payment be not paid, or sufficient cause for non-payment be not shown, at or before the time of sale to the Collector, Deputy Collector, or other officer as aforesaid, such officer shall sell the vessel and furniture seized, or so much thereof as may be approximately necessary to pay the toll or fee, and also any expenses occasioned by non-payment. So much of the property seized as may not have been sold, and so much of the sale-proceeds as may be in excess of the sum necessary for satisfying the toll or fee and for defraying the expenses occasioned by non-payment, shall be returned to the person in charge of the vessel.

Appointment of Supervisor with power to remove obstructions.

9. It shall be lawful for the Madras Government to appoint any person to be the Supervisor of any line of navigation subject to the provisions of this Act; and such person shall be empowered to cut down and remove any tree which may have fallen, or may be likely to fall, into such line of navigation, and to remove any sunken vessel, and to prevent or remove any other nuisance or obstruction to navigation, of whatever description, whenever he may think it necessary.

Mode of exercising such power.

10. Whenever such Supervisor shall consider that the cutting down and removal of any tree, or the removal of any other obstruction, is necessary, he may, in cases of emergency, at once remove the same, and may for that purpose enter on any private property. In cases not of an emergent nature, he shall serve a notice in writing on the owner or occupier of such private property, or on some adult member or servant of his family, directing him to remove the same within a reasonable time. If the notice cannot be so served, it may be affixed on some conspicuous part of his last known place of abode, or of the nearest village. If the owner or occupier shall not remove the obstruction within the time given in the notice, the Supervisor may proceed to remove it himself, and may for that purpose enter on any private property. Payment of all expenses of such removal may be enforced by the sale of the thing removed in the manner provided for the recovery of tolls in Section 8 of this Act, or, if such sale-proceeds are insufficient, the balance may be recovered in the manner prescrib-

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ed in the case of an arrear of revenue under Madras Act II of 1864.

Supervisor may forbid the construction of fishing contrivances, &c.

11. Whenever, in the opinion of such Supervisor, the construction of any contrivance for fishing or for any other purpose in any line of navigation is likely to cause obstruction to the free and safe transit of such line of navigation, he may, by a notice in writing to be served on the owner or person in charge of such contrivance in the manner prescribed in the previous section, forbid the construction or continuance of such contrivance.

Penalty for causing obstruction to line of navigation.

12. Any person who shall wilfully cause, or shall aid in causing, any obstruction to any line of navigation, or any damage to the banks or works of such line of navigation, or who shall wilfully omit to remove such obstruction after being lawfully required so to do, shall be punished, on conviction before a Magistrate, with simple imprisonment which may extend to one month, or with fine which may extend to 50 rupees, or with both, and shall also be liable to pay such fine as may be sufficient to meet all reasonable expenses incurred in abating or removing such obstruction, or in repairing such damage.

Government to establish ferries and license ferry-boats.

13. It shall be lawful for the Madras Government to establish ferries across any *channel* at such points as may be selected, and to maintain or to license boats for the conveyance of passengers, goods, carriages, carts, palanquins, or animals across such ferries, and to forbid, within such limits as may be prescribed, the transport of passengers, goods, carriages, carts, palanquins, or animals across such *channel*, in any boats except such as are maintained or licensed as aforesaid.

Government to fix rates of license fees and tolls.

14. Whenever any such ferry shall have been established, it shall be lawful for the Government, from time to time, to fix and vary the fees payable to Government by the owners of licensed ferry-boats, and also the tolls payable for the conveyance of passengers, goods, carriages, carts, palanquins, or animals across such ferry. A Notification of such tolls shall be at all times exhibited to public view on each side of the ferry in English and in the vernacular language of the district.

Table of tolls.

Management of ferries and collection of license fees and tolls.

15. The Government shall be authorized to appoint all necessary persons to take charge of, and manage, such ferries and ferry-boats, and to collect the license fees and tolls payable at such ferries. It shall also be lawful for the Government to lease out the right of maintaining or licensing such ferry-boats, and levying such tolls; and the lessee, or his duly authorized agent, shall thereupon be empowered to collect and receive such license fees and tolls in the same manner as any person appointed as aforesaid.

Penalty for non-payment of toll.

16. In case of non-payment of toll on demand, the person authorized to collect such toll shall be empowered to seize any goods, carriage, cart, palanquin, or animal chargeable with such toll, and to proceed to sell the same in the manner prescribed by Section 8 of this Act.

Security may be required from lessee of ferries.

17. When any ferry shall have been leased out, it shall be lawful for the Government, from time to time, to require security to be deposited by the lessee for the maintenance of proper boats, servants, and appliances. It shall be lawful for any Revenue Officer *authorized by the Collector in that behalf*, from time to time, to inspect such boats, servants, and appliances, and to satisfy himself as to their fitness or otherwise for the business of the ferry, and to report thereon to the Collector of the district.

Inspection of ferries leased out.

Procedure in case of defective management of ferries leased out.

18. Whenever the Collector shall be satisfied that the boats, servants, or appliances of any ferry which has been leased out are unsafe or insufficient, he shall call upon the lessee to make good the defect within a reasonable time which shall be specified in the notice, and shall inform him that, at the expiration of such time, he will be liable, in the event of non-compliance, to have his lease cancelled, or to have the deficiency complained of made good at his own expense. If the lessee shall not comply with the terms of the notice, the Collector shall be at liberty to make good the deficiency at the expense of the lessee, or, with the sanction of the Board of Revenue, to cancel his lease.

Recovery of expenses incurred on account of defaulting lessee.

19. Where the Collector shall have incurred any expense on behalf of the lessee under the preceding section, it shall be lawful for him either to deduct the same from the security deposited by the lessee, or to recover the amount in the manner provided for in the case of an arrear of land revenue by Madras Act II of 1864.

Power to abolish any existing ferry and to grant compensation in respect thereof.

20. The Madras Government shall be authorized, by notice to be published in the manner directed by Section 5, to declare that any ferry hitherto in use shall no longer exist. But, whenever the Government shall think fit to abolish any ferry in which any person shall have acquired a legal interest, or to establish a new ferry within such a distance of such previous ferry as materially to diminish its income, the owner of such ferry shall be entitled to compensation for the injury done to his vested rights. Such compensation shall be assessed and satisfied, as nearly as possible, by the same procedure as if the ferry were land which had been taken possession of by Government for public

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purposes under Act VI of 1857 *(An Act for the acquisition of land for public purposes,)* or under any other Act that may now or hereafter be in force for the taking possession of land for public purposes. Provided always that any compensation payable under this section shall be satisfied out of the proceeds of the Canal and Ferry Fund hereinafter mentioned.

No action to lie against Government in respect of acts done in pursuance of Section 3 and Section 20.

21. No action or suit shall be brought against the Secretary of State for India in Council or the Government in respect of any injury or damage caused by, or resulting from, any act done under Section 3 or under the last preceding section.

Rules relating to lines of navigation.

22. It shall be lawful for the Madras Government, from time to time, to make rules not repugnant to any law in force, for the management of any line of navigation or ferry subject to this Act, and for regulating the conduct of persons employed for any of the purposes of this Act, and to repeal, alter, and amend the same; and the said Government may affix fines as penalties for the infringement of such rules, not exceeding 50 rupees for any one infringement, or 5 rupees a day for any continuing infringement.

Such rules may contain directions for any of the following amongst other matters :—

For determining the tonnage of vessels and their measurement; for fixing the number and the width of vessels to be allowed to pass into, or out of, or through, any line of navigation at one time or abreast; for determining the length of time during which vessels may remain stationary on any line of navigation, and the amount of demurrage to be paid by vessels remaining stationary beyond such time; for regulating the mode in which, and the places at which, tolls or license fees are to be levied under this Act; for the removal of sunken vessels and obstructions; and for the storing, custody, and disposal of the cargo of vessels, or of any animal or thing seized under this Act.

Publication of such Rules.

23. Rules shall not be passed until the same shall have been published in the *Fort Saint George Gazette and in the Gazette of any district to which they may apply*, for a period of six weeks, and, after that time, the rules shall be published as passed, with such alterations, if any, as to the Madras Government shall seem fit. The rules so published as passed shall not have effect until the expiration of two weeks after such last publication, and all rules so published shall, until the same be repealed or altered, be of like effect as if they were inserted in this Act. Copies of all rules, in English and in the vernacular language of the district, shall be exhibited to public view at every place where toll or license fees are collected.

[illegible] Penalty for evasion of toll, [illegible]

24. Any person who shall refuse to pay, or evade, or attempt to evade, the payment of any toll or license fee due under this Act, or shall infringe any right of ferry, shall be punished, on conviction before a Magistrate, with a fine which may extend to 50 Rupees, or with simple imprisonment, in lieu of fine, which may extend to one month.

Penalty for unauthorized levy of toll, &c.

25. Any person other than the persons authorized under this Act, who shall levy or demand any tolls or license fees, and also every person who shall knowingly demand any higher toll or license fee than this Act permits, or who shall, under colour of this Act, detain, seize, or sell any property or animal, knowing such detention, seizure, or sale to be unlawful, or shall wilfully fail to comply with all the requirements of Section 8, or shall in any manner extort money or any valuable thing from any person under colour of this Act, shall be deemed to have committed the offence of cheating, and shall be liable to such punishment as is provided for that offence by the Indian Penal Code.

Offences against this Act by whom punishable.

26. If any person shall be guilty of an offence against the provisions of this Act on any line of navigation subject to this Act, such offence shall be punishable by any Magistrate having jurisdiction over any district or place adjoining such line of navigation, or adjoining either side of that part of the line of navigation in which such offence shall be committed; and such Magistrate may exercise all the powers of a Magistrate under this Act, in the same manner and to the same extent, as if such offence had been committed locally within the limits of his jurisdiction, notwithstanding the offence may not have been committed locally within such limits; and, in case any such Magistrate shall exercise the jurisdiction hereby vested in him, the offence shall be deemed, for all purposes, to have been committed locally within the limits of his jurisdiction.

Period of limitation as to actions in respect of proceedings under this Act.

27. All actions against any person for anything done or intended to be done under the provisions of this Act shall be commenced within three months after the act complained of; and notice in writing of the action and of the cause thereof, and of the damages claimed, shall be given to the defendant one month at least before the commencement of such action.

Tender of amends.

If tender of sufficient amends shall have been made before action brought, then the plaintiff shall recover such amount only, and shall pay all the defendant's costs. If a sufficient sum of money shall have been tendered after action brought and before the final hearing, then the plaintiff shall recover such amount and his costs up to the time of tender, and shall pay all costs incurred by the defendant after such tender.

Disposal of fees, tolls, &c., collected under this Act.

28. All rents, license fees, tolls, and fines collected and levied under this Act shall be paid into the public Treasury, and carried to the credit of a fund to be entitled the "Canal and Ferry fund." Such Fund, after payment of all expenses incurred and all claims for com-

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pensation payable under the Act, shall be applied to the *construction*, inprovement, repair, maintenance, and extension of the *channels* and ferries to which the provisions of this Act may be applied. Provided always that the Government shall be under no obligation to expend in any particular District the whole or any part of the surplus fund realized in that District.

Indemnity for certain acts done heretofore in the collection of tolls, &c.

29. All persons employed by the Government of Madras are hereby indemnified for all acts done by them or any of them in the collection heretofore of any tolls on the navigable channels *in the Madras Presidency.*

Short Title.

30. This Act may be cited as "The Canals and Ferry Act, 1870."

(By order.)

JOHN D. MAYNE,

Assistant Secretary to Govt.,

Legislative Department.

MISCELLANEOUS.

COFFEE ESTATES.

We doubt if the coffee planters of the Madras Presidency are aware of the fact that their attempt to reclaim the waste lands of the country is the only enterprize of the kind in India that is burdened with the payment of a land-tax. The tea planters, neither of Assam nor of the Punjab, pay any land revenue whatever, for, under the rules of 1863 for the sale in fee-simple of the waste lands of Bengal, the North-West Provinces, Oudh, Burmah, the Central Provinces, and the Punjab, the purchase of the land, at whatever price, carries with it an exemption from the land-tax for all time. The rules of the Madras Presidency offer, in all respects, a strange contrast to those of the other Governments of India, and, now that coffee planting has proved so disastrous a speculation, it is time that those rules were revised in a spirit of consideration towards the planter. In every other province of India ten years are allowed for the payment of the purchase-money of the land; in Madras but *three*. The lowest upset price of land in Madras is 2½ rupees per acre, while in the coffee districts it is 5 rupees, and sometimes 10 rupees. In the Bengal Presidency and the North-West Provinces it never exceeds 2½ rupees except in special cases, while in the Central Provinces it is only eight annas. In the Madras Presidency, no grant is allowed to exceed 500 acres, while in the rest of India it may be 3,000, 5,000, and even 10,000 acres. The crowning disadvantage, however, is that a grant of land in the Madras Presidency, let the price be what it may, confers no exemption whatever from the land revenue. Now, if coffee had proved itself the remunerative investment it was supposed to be, and under which belief these Madras rules were framed, there would be nothing to say against them. But now that it is found that the investment is uncertain and dangerous in a very high degree, the Madras Government is bound, we think, to assimilate its terms to those granted to the planters of Assam and Northern India, and so to give relief to the coffee planter.

Men who have lost a fortune in coffee planting in Southern India have no choice but to abandon their estates or continue to pay an assessment of Rupees 2 per acre to the State. A proper representation of the facts of the case ought to secure the remission of this land-tax, at all events for some years to come. The Planters' Club at Ootacamund could hardly do better, we should think, than draw up a memorial to Government upon the subject, representing the disadvantages at which the waste land rules of the Presidency place the coffee planter, and praying for their alteration in conformity with the rules under which the cultivation of tea is being carried on in Bengal and Northern India. The coffee planter is either being treated unjustly, or undue consideration is being shewn to the tea planter.—*Indian Economist, December* 10, 1869.

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